NEW ZEALAND AND COLONIES (UPPER HOUSE).

3

RETURN to an Address of the Honourable The House of Commons, dated 16 February 1893;—*for*,

"COPY of PAPERS and EXTRACTS relating to the Appointment of MEMBERS to the UPPER HOUSE of REPRESENTATIVES in *New Zealand* and the *Colonies*."

Colonial Office,
April 1893.

SYDNEY BUXTON.

(*Mr. Allen*).

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COPIES of PAPERS and EXTRACTS relating to the Appointment of MEMBERS to the UPPER HOUSE of REPRESENTATIVES in *New Zealand* and the *Colonies*.

— No. 1. —

The Earl of *Onslow* to Lord *Knutsford*.

(Received 2 March 1891.)

[Answered by No. 5]

My Lord, Wellington, 23 January 1891.

I HAVE the honour to inform your Lordship that, acting on the advice of my Ministers, I have summoned the following gentlemen to the Legislative Council of New Zealand, viz.: Mr. John Blair Whyte, Auckland; Mr. Francis John Davies Ormond, Hawke's Bay; Mr. Charles John Johnston, Wellington; Mr. Charles Christopher Bowen, Canterbury; and Messrs. James Fulton and William Downie Stewart, Otago.

No fresh appointments have been made to this body since the year 1887; in fact, since the present Ministry have been in office.

On the other hand, several deaths and resignations have taken place, reducing the number of Councillors from 48, at which it stood on the 8th October 1887, to 39 to-day, and of these it may safely be said that, from extreme age, absence from the colony, or other reasons, the effective strength barely exceeds 30.

My Ministers have repeatedly expressed their desire to effect a reform in the Council, to reduce the period of service to seven years, instead of for life, and to limit the number to one-half of those in the House of Representatives. At the same time they considered it to be essential that the whole of the Members should be able, willing, and efficient, for the performance of their duties.

In 1887 they introduced a Bill with this object; but it was discharged before it reached the second reading.

Last Session a Bill embodying the principles declared to be those entertained by the Government was introduced into the Legislative Council by a private Member; was amended by the Attorney-General to meet the views of the Government, and cordially supported by the Government in the Council; but was rejected by that body; and, in the face of that opinion, my Ministers concluded that it would be futile themselves to submit to Parliament a measure on similar lines.

My Ministers refrained from offering me any advice as to strengthening the Council before the expiration of the Parliament and the General Election.

The result of that election has been, as I apprised your Lordship in my Despatch of 18th December 1890*, to make a great change in the personnel of the House of Representatives, and, in the uncertainty as to the political views of the new Members, I have, as I have already informed your Lordship, summoned Parliament at the earliest convenient date.

* Not printed.

I had before me the statement of Ministers that it was necessary to summon Parliament, in order that they might ascertain the feelings of confidence towards them entertained by the new representatives of the people, and I, therefore, hesitated before accepting their advice to make these appointments. I thought it my duty to demand from them an assurance that the advice was tendered, less with a view to reward party services, than for the purpose of strengthening the efficiency of the Upper House. That assurance has been given me, and I have, therefore, accepted the advice.

Petitions, numerously signed, have been presented to me, requesting me to defer these appointments till after the meeting of Parliament. It is urged in them that: (1.) The present Ministry are in a minority; (2.) Sir H. Atkinson has pledged himself not to advise fresh appointments till the numbers were reduced below one-half of those constituting the House of Representatives;

(3.) The Legislative Councillors now exceed by three or four half the number of the House of Representatives.

I gave due consideration to these representations, and to the spirit in which I believe Her Majesty's Government regard the position of colonies possessing representative government. I trust that I interpret those views aright, in holding that, where there is nothing to the contrary in the Letters Patent of 21st February 1879, constituting my office, or in the Royal Instructions accompanying them, the constitutional practice observed in England should form the main lines for guidance under similar circumstances. I therefore dismissed the first reason, without waiting to inquire as to its accuracy.

Enclosure No. 2. Upon the second argument I received the Memorandum, which I enclose, from Sir H. Atkinson, and which appeared to me to be satisfactory; and, as to the third, I would point out to your Lordship that, though true of the nominal, it is not true of the effective, strength of the Legislative Council, that the House of Representatives has but just been reduced from 95 to 74 Members, while it has not been found possible to effect any reform of the Upper House.

Had it been proposed to me to make fresh creations to the extent of, say, one-third of the existing House, I should have had grave hesitation in accepting advice which might be treated as a precedent for swamping the votes of the existing majority, in order to carry party legislation.

It has, however, long been the practice in England for Ministers, even after a vote of censure has been passed on them in Parliament, to advise the Crown to create a limited number of Peerages, not only for the purpose of strengthening the Upper House, but admittedly as rewards to those who, being qualified for the position of Peers, have rendered political services to the defeated party.

It is the fact that, in 1877, when a vote of want of confidence in Ministers was pending, Lord Normanby declined to accept advice as to an appointment until the result of the vote was known; but on the vote being rejected, he immediately acted on the nomination of Sir George Grey, the Premier. On the other hand, in 1869, a vote of want of confidence was moved on the 15th June in Sir Edward Stafford's Ministry, and carried on the 24th June; but, on the 17th, the Governor, while the debate was pending, accepted his Ministers' advice to raise Messrs. Paterson and Pharazyn to the Council, and on the 25th also accepted their advice to call Mr. Levin to that body.

† Not printed. Although Lord Carnarvon, in his Despatch of 15th January 1878,† approves generally of Lord Normanby's conduct, in the first-mentioned case, I trust that your Lordship will approve of the action which, under somewhat different circumstances, I have thought it my duty to take.

I have, &c.
(signed) *Onslow.*

The Right Hon. the Lord Knutsford, G.C.M.G.
&c. &c. &c. &c.

Enclosure 1 in No. 1.

MEMORANDUM for the Honourable the Premier.

17 January 1891.

THE Governor has received the accompanying petition respecting any further appointments to the Legislative Council. Should the Premier contemplate offering any advice to the Governor such as the petitioners deprecate, the Governor requests that the Premier will give him some information respecting the second of the petitioners' allegations.

(signed) *Onslow.*

To His Excellency Earl *Onslow*, Governor of New Zealand.

Your Excellency,

We, the undersigned electors of the Provincial District of Otago, humbly pray your Excellency that you will refrain from sanctioning or making any further appointments to the Legislative Council of New Zealand until after Parliament shall have assembled, for the following reasons:—

1. That the present Ministry, being in a minority at the recent elections, do not represent the people, and have, therefore, no right to make any recommendation to your Excellency on the matter.

2. That Sir H. A. Atkinson, the Premier, in 1887 and 1888, pledged himself not to make any recommendation for appointments to the Council until the numbers thereof were reduced to a number below one-half of the reduced number of Members of the Legislative Assembly, nor until legislation had been introduced and passed providing for the limitation of the tenure of office of such Legislative Councillors.

3. That as the number of Legislative Councillors at present exceed one-half of the reduced number of Members of the Legislative Assembly by three or four, no reason exists for the appointment of additional Members.

And your petitioners will ever pray.

(Signed by *D. Pinkerton*, M.H.R., and 5,228 others.)

Enclosure 2 in No. 1.

Memorandum for His Excellency the Governor.

The Premier acknowledges a Memorandum in which his Excellency the Governor requests some information respecting the following statement in the petition from a number of electors of the Provincial District of Otago:—

That Sir H. A. Atkinson, the Premier, in 1887 and 1888, pledged himself not to make any recommendation for appointments to the Council until the numbers thereof were reduced to a number below one-half of the reduced number of Members of the Legislative Assembly, nor until legislation had been introduced and passed providing for the limitation of the tenure of office of such Legislative Councillors.

The Premier has never, so far as he is aware, made such a promise; and any statements of his which may appear to bear such interpretation were only made under the belief that an Act would be shortly passed effecting the reforms that the Government desired, but in this hope the Government have been disappointed, it having been found impossible to obtain legislation.

In order, however, that there should be no mistake, the Premier caused careful search of records to be made, and can nowhere find such a pledge. He then applied to Mr. Fish, one of the Members for Dunedin, and one of the leading signatories of the petition, for information upon what authority the statement made in the petition was founded. In reply, Mr. Fish courteously informed him that a sentence in the Financial Statement of 1887, and what took place in the House of Representatives on the 6th of August 1888, were relied on as justifying the statement referred to.

The paragraph of 1887 was as follows: "They (the Ministry) will also during the present Session invite the Legislative Council to devise a plan by which their number may be reduced to 35, one-half of the number of members proposed for this House, and thereafter limited to that number."

It is quite clear that such a pledge cannot be found in this paragraph under any canon of interpretation, and the Premier distinctly denies that he ever contemplated such a promise.

On the occasion referred to in the House of Representatives it was moved, "That, in the opinion of this House, no further appointment should be made to the Legislative Council until the Legislature shall have had an opportunity

of determining upon any alterations to be made in the direction of limiting the number of Members, altering the mode of appointment, or of limiting the time for which such appointments should be valid."

In the course of the debate, Sir H. A. Atkinson, amongst other things, is reported to have said, "Have the Government done anything to lead the honourable gentleman to believe that they are going to make undue appointments? Have they not practically promised that they will not make such appointments?"

Again, Mr. Kerr asked, "Am I to understand that no appointment will be made before next year?" That is 1889.

Sir H. A. Atkinson: "I could not make a positive statement. . . . The Government have no intention of making an appointment . . . unless necessary to carry on the Government."

Mr. Ward: "I hope the Government will not make any appointment during the recess, but, if they do so, I trust they will have some regard to the representation of the part of the colony which I have the honour to represent. The District of Southland at one time was entitled to, and had, four Members in the Upper Chamber, but death has removed three of them; and, in fairness to people in that part of the country, I think that, if any appointments are to be made, someone in that district should be appointed. At the same time I hope that no further appointments will be made; but, should such be necessary, I trust the Premier will make them from the part of the country to which I have referred."

Sir H. A. Atkinson: "The only cause which, in my opinion, could justify an appointment, except on the recommendation of this House, would be the necessity of carrying on the Government, and then other matters than locality would have to be taken into consideration."

The motion was negatived.

It is evident from these extracts, and from the spirit of the debate, that the speakers all based their remarks upon the necessity of giving Parliament further opportunity of legislating upon the matter; and this is clearly set forth in the resolution upon which the debate took place.

The Premier's remarks referred only to the coming recess; it is impossible to suppose that he should pledge himself for all time to make no further appointments to the Legislative Council. His remarks were evidently governed by the hope which the Government then entertained, that legislation would then be possible; and it was only after two Sessions had passed subsequently to this debate that he gave up this hope, and, deeming it necessary for the efficiency of the Council, recommended the appointment of a limited number of Councillors.

In the Session of 1890, on the 25th of July, the following resolution was proposed by Mr. Larnach: "That, in the opinion of this House, his Excellency the Governer should not be advised to make any appointments to the Legislative Council until after the meeting of the next Parliament." This resolution was debated at length (the Premier did not speak, not being present), and, on a division, was rejected in a full House by a majority of 48 to 43.

The Premier may also add that the policy of the present Ministry has always been to reform the constitution of the Council, and attempts were made in the late Parliament to do so, but failed of success. In the Session of 1890 Sir G. Whitmore brought in a Bill having, *inter alia*, for its object the shortening of the term of the appointments from life to seven years. The Bill was amended by the Attorney General in order to meet the views of the Government, and was cordially supported by the Government in the Council; but on a division on the Third Reading it was lost by a majority of 17 to 13.

The Premier also takes this opportunity to inform his Excellency that the Opposition have been in office five years since 1877, and have appointed 21 Members to the Legislative Council. The present party in power, having been in office eight years since 1877, have only so far appointed eight Members (all of whom were appointed prior to the present Government coming into office), and they propose now to add seven to this number.

17 January 1891. *H. A. Atkinson.*

Enclosure 3 in No. 1.

From the Honourable the Premier to His Excellency the Governor.

(Telegram.)

19 January 1891.

THE Cabinet has decided to respectfully recommend your Excellency to call the following gentlemen to the Legislative Council: Messrs. J. B. Whyte, Auckland; J. D. Ormond, Hawke's Bay; C. J. Johnston, Wellington; C. C. Bowen, Canterbury; and J. Fulton and W. Downie Stewart, Otago.

H. A. Atkinson.

Enclosure 4 in No. 1.

From His Excellency the Governor to the Honourable the Premier.

(Telegram.)

20 January 1891.

THE Governor has received the Premier's telegram informing him that the Cabinet recommend him to call Messrs. Whyte, Ormond, Johnston, C. C. Bowen, Fulton, and Downie Stewart, to the Council. In view of the Premier's memorandum of 17th December to the effect that, having regard to the uncertainty of the strength of parties in the House of Representatives since the general election, it is desirable that Parliament shall be summoned at the earliest possible date, the Governor, before taking action on the recommendation tendered, requests the Premier to advise him whether the names that are suggested are in his opinion best calculated to strengthen the efficiency of the Upper House; and, further, whether they are the six names, if not in New Zealand, at least from among the supporters of the Government, best calculated to effect that object.

Onslow.

Enclosure 5 in No. 1.

(Telegram.)

From the Honourable the Premier to His Excellency the Governor.

20 January 1891.

IN reply to your Excellency's telegram *re* the appointment of Legislative Councillors, I have the honour to state that I have submitted it for the consideration of the Cabinet, and, in their opinion, the six names submitted from among the available supporters of the Government are those best calculated to strengthen the efficiency of the Council.

H. A. Atkinson.

Enclosure 6 in No. 1.

From His Excellency the Governor to the Honourable the Premier.

(Telegram.)

20 January 1891.

UPON the assurance contained in the Premier's memorandum that the six names submitted are best calculated to strengthen the efficiency of the Council, the Governor appoints Messrs. Whyte, Johnston, Ormond, Fulton, Downie Stewart, and Bowen, to Legislative Council.

Onslow.

— No. 2. —

The Earl of *Onslow* to Lord *Knutsford*.

(Received 2nd March 1891.)

* No. 1. My Lord, Wellington, 24 January 1891.

I ADDRESSED your Lordship in a Despatch on the 23rd instant* with reference to the recent appointments which I have made to the Legislative Council of New Zealand.

In that Despatch your Lordship will have noticed a paragraph in which I informed your Lordship of the action which I should have taken in a hypothetical case.

As a matter of fact, that case actually presented itself, though it never assumed an official character, and my Ministers are anxious that the negotiations which took place between us should not be made public, lest it should embarrass them in Parliament.

I desire, however, that your Lordship should be in possession of the whole of the facts, as it is possible that the course of recent events in New Zealand may form a precedent for future action.

Ministers informed me early in the last Session of Parliament that they were desirous of adding to the Legislative Council, but were not anxious to tender any advice on the subject till the latest possible date, and they inquired whether I would accept their advice at any time. I replied that I would carefully consider their advice on the subject, with a view to its acceptance; but I thought that, both for their sakes and my own, that advice should be tendered before any catastrophe occurred to the Ministry.

None of the votes of want of confidence moved had any chance of being carried, and Ministers did not, therefore, deem it necessary to tender advice.

The General Election took place, and the result was as unexpected by Ministers as by the Opposition.

The Leader of the Opposition, Mr. Ballance, in a public interview, and in the paper of which he is editor, demanded the dismissal of Ministers if they should not voluntarily resign, and maintained that, constitutionally, Ministers had no right to offer advice as to any fresh appointments.

It subsequently appeared that the prospects of parties were neither so favourable to the Opposition, nor so disastrous to the Government, as was at first generally believed to be the case.

Ministers agreed to summon Parliament, and to resign as soon as it had met, but intimated privately to me that they wished to advise the appointment of not less than 11 Councillors in a House of 39.

This appeared to me to be so undue a proportion as to make a dangerous precedent, in case a Minister should wish, for party purposes, to swamp an adverse vote in the Upper House.

The Premier asserted that the Government had pledged itself to these gentlemen, as to some of whom it could not possibly be pretended that they would strengthen the House, or that they were appointed for any but party purposes. In some cases the appointments were, without doubt, merely rewards for desertion from the Opposition cause.

The Premier then said that either Ministers had my confidence or they had not. If they had, I ought to accept all their advice; if not, to dispense with their services; and he directed that the "Gazette" summoning Parliament, which had been put in type and was being struck off, should not be issued.

The latter fact becoming public caused much speculation as to its cause.

With the Premier's consent, I consulted Mr. Bryce, formerly Minister for Native Affairs, and the most prominent supporter of the Government in the House of Representatives. His views coincided with mine, and, after some negotiation, the Government agreed to retain office on my consenting to appoint to the Council six of the 11 names suggested, and they agreed to give me a formal assurance that those six were recommended solely with the view of adding strength to the House and not for party purposes, and, further, that they

were

were the six men, if not in New Zealand, at least of their party, best calculated, in their opinion, to increase the efficiency of the Legislative Council.

I trust that your Lordship, in considering my Despatch above referred to, will do so in conjunction with the information herein laid before you.

I have, &c.
(signed) *Onslow.*

The Right Hon. the Lord Knutsford, G.C.M.G.
&c. &c. &c.

— No. 3. —

The Earl of *Onslow* to Lord *Knutsford.*

(Received 20th March 1891.)

[Answered by No. 5.]

My Lord, Wellington, 3 February 1891.

I HAVE the honour to forward, at the request of Mr. Shera, a Member of the House of Representatives, two copies of a Petition signed by 40 Members of the same House, and presented by them in person. This Petition was presented to me a few hours before the meeting of Parliament on the 23rd January, against the appointment of any more Members of the Legislative Council until after the meeting of Parliament.

2. It was a matter of common notoriety that the appointments were already made when the Petition was presented, and it could not, therefore, have been expected to effect the object of its prayer.

3. As the Petition was presented in person, I concluded that the object of the Petitioners was to hear from me something of the causes which induced me to accept the advice of my Ministers. I replied that it was no part of my duty to enter into explanations of my actions to anyone but your Lordship, and I referred the deputation to the Despatches which are annually laid on the table of Parliament, and which will be presented as soon as a Speaker should have been elected.

4. I have already addressed your Lordship at length on this subject, which, as a precedent, is one of some importance.

5. There were four points which presented themselves in considering the advice tendered to me.

(1.) Whether Ministers were seeking to fill the Upper House during their term of office with more than a reasonable number of their nominees.

(2.) Whether there was any indication that their object was to alter the political bias of the House in favour of their party.

(3.) Whether the names were those of men unfit to occupy seats in the Council, and,

(4.) Whether Ministers, whose position in Parliament was doubtful, were entitled to recommend such appointments.

6. As to the 1st and 3rd points, I formed the opinion that had Ministers been in undoubted possession of the confidence of Parliament, no objection was likely to have been taken, except from a purely party point of view. It is true that the Premier was alleged to have given certain pledges, but this was a matter which concerned himself.

7. As to the 2nd point; during the previous Session of Parliament several measures drawn in the interests of the Labour Party had been rejected by the Upper House as then constituted, and, so far as the opinions of its members have a party tendency, they were already more in line with the party then in power than with the Progressive Party; while, as to the question of the reform of the Legislative Council, which that body had refused to consider, but which both political parties deem desirable, the new Councillors were themselves pledged in its favour.

8. The 4th consideration is really the important one: assuming, as I do, that there was no valid objection to the appointments, I found it additionally difficult for me to take the very grave responsibility of differing from my Advisers. Such a step is certain to bring the Representative of the Queen into collision with some portion of those over whom he is called upon to administer the Government, and renders his conduct open to discussion in Parliament.

9. The gravest responsibility would rest upon me for the adoption of such a course in a case concerning the Colony alone, which neither affected the Royal Prerogative of Mercy nor the question of an appeal to the people, and was in consonance with accepted constitutional practice.

10. Although these appointments were made on 20th January, they had, with the exception of the actual names, been long under discussion with Ministers, and I had entertained some difference of opinion with them on the subject.

11. This difference was finally adjusted on 16th December, when I agreed to make six appointments, on the assurance that, in the opinion of Ministers, they should be the six men from among their supporters best calculated to strengthen the weakened Upper Chamber, and that as soon as Ministers could decide on the names (a process which appears to have been a lengthy one) they were to be formally submitted to me.

12. I should be wanting in candour were I to lead your Lordship to suppose that either the majority of the House of Representatives, the whole of the party which supported the late Government, or all the Legislative Councillors, approve the conduct of the late Ministry in tendering me this advice.

13. I do not think it is seriously maintained, in the face of the constant practice in England for defeated Ministries to advise Her Majesty to create peers, that there has been anything unconstitutional in my action; but, so far as I can gather, there is a strong feeling in the Colony that the practice which obtains in England of making Ministerial appointments before vacating office is not one which New Zealand Ministers should be encouraged to follow.

14, If I have interpreted that feeling aright, public opinion will be strong enough to prevent its recurrence.

15. In Colonies possessed of such democratic institutions as Manhood Suffrage and Triennial Parliaments, in addition to a numerous and universally read press, public opinion is not slow to assert itself, or to execute summary punishment on the Ministry or Party which has acted contrary to its wishes.

16. The unexpected support which the new Ministers had received in the recent short Session of Parliament, and the discontent of many of the supporters of the late Government is a sufficient intimation to the leaders of the party lately in power of the state of public opinion on this matter, and ought to prevent any serious evil to the Colony arising out of the event, considered in the light of a precedent; while, at the same time, the resignation of Ministers because their advice has not been accepted has been avoided—a step which, in my opinion, only the most imperative necessity can justify.

17. I need hardly add that any expression of opinion from your Lordship will greatly aid me in the course which I should adopt in future, and will be valued in the Colony as an indication of the attitude which Her Majesty's Government desire the Representative of the Queen to assume towards his Advisers and towards the people of these large and growing communities, who are in full possession of the powers of self-government, and perfectly able to control and direct those to whom they entrust the Government.

I have, &c.

The Right Hon. the Lord Knutsford, G.C.M.G. (signed) *Onslow.*
&c. &c. &c.

Enclosure in No. 3.

To His Excellency the Earl of *Onslow*, Governor of New Zealand.

May it please your Excellency:

We, the undersigned Members of the House of Representatives of New Zealand, desire respectfully to bring under your Excellency's notice the fact that statements have appeared in the public prints to the effect that Ministers have advised your Excellency to call a number of gentlemen to the Legislative Council prior to the opening of Parliament.

As Representatives of the people of New Zealand we beg to state:—

I. That your Excellency's present Advisers are now resigning office.

II. That the people of the Colony are, without doubt, opposed to any more immediate appointments to the Legislative Council, especially as at present constituted.

III. That such appointments will, if made, be in direct opposition to an understanding arrived at between your Excellency's Ministers and the House of Representatives, and also to the Report of a Committee adopted by the Legislative Council.

We are, &c.
(signed) *J. M. Shera,*
Wm. Kelly,
Robt. M. Houston,
E. Metcalf Smith,
A. J. Cadman,
H. S. Fish, Jun.,
and 35 others.

— No. 4. —

The Earl of *Onslow* to Lord *Knutsford.*

(Received 20th March 1891.)

My Lord, Wellington, 3 February 1891.

With reference to my Despatch of this date,* and to my Despatch of 24th January,† I think your Lordship should be informed that, at the time (16th December) when I gave an undertaking to Sir Harry Atkinson to accept his advice to call six, instead of eleven, gentlemen to the Legislative Council, though I was aware that the Premier's health would not permit him to continue in office, and his resignation was a necessity, he handed me a card of the new Parliament, which he said the Government had carefully considered, and according to which he claimed for his party 35 supporters against 32 of his opponents, while six votes (some of which he hoped to secure) were doubtful.

Had these prognostications (the reliability of which I had no means of testing) been realised, he would doubtless, upon his resignation, have advised me to send for one of his colleagues or prominent supporters, and the continuity of the Government need not have been broken.

* No. 3.
† No. 2.

I have, &c.
(signed) *Onslow.*

The Right Honourable
The Lord Knutsford, G.C.M.G.,
&c. &c. &c.

— No. 5. —

Lord *Knutsford* to the Earl of *Onslow*.

My Lord, Downing-street, 11 April 1891.

* Nos. 1 and 3.

I HAVE the honour to acknowledge the receipt of your Despatches* reporting upon matters connected with the change of Ministry in New Zealand in January.

With regard to the appointments to the Legislative Council recommended by the late Government, I am of opinion that, in accepting the advice tendered to you by your Lordship's responsible Ministers, under the circumstances described in your Despatches, you acted strictly in accordance with the Constitution of the Colony, but I do not desire to be understood to offer any opinion upon the action of your Ministers in tendering that advice.

I have, &c.

Governor The Earl of Onslow. (signed) *Knutsford*.

— No. 6. —

The Earl of *Glasgow* to Lord *Knutsford*.

(Received 4th August 1892.)

[Answered by No. 7.]

Wellington, New Zealand,

My Lord, 22 June 1892.

I HAVE the honour to inform you that, since my arrival in the Colony on the 7th instant, I have had several interviews with Mr. Ballance, the Premier, on the subject of the appointment of the increase of the Legislative Council, and the request of the Government that twelve (12) new nominations to that Chamber be approved of; and yesterday morning I informed him that I felt myself unable to appoint more than nine (9).

2. The gist of his communications to me were as follows: that there are certain projects which the Government wish to pass into law, the legislation as to land in particular; and that the Government find themselves in an unbearable position in the Legislative Council. In the House of Representatives they have a good working majority, but in the Legislative Council the Attorney General, who is the only Minister in that Chamber, finds himself with the support of only, at the outside, four or five Members, none of whom possess any debating power whatever. "It is plain," said Mr. Ballance, "that no Government can carry on the business of the House satisfactorily when in one Chamber they exist only on sufferance." He also said, later on, that it was not the wish of the Government to swamp the Legislative Council, but only to have a certain amount of debating power, of which, at present, they have none. He remarked that if the Legislative Council throws out the Bills he is going to re-introduce this Session the consequences may be very serious, and stated that he thought Lord Onslow would have granted twelve (12). But I pointed out that in the Confidential Despatch which Lord Onslow had left for me, and which he showed to Mr. Ballance before leaving, he had not indicated that he would grant more than eight (8).

3. In reply I stated that I was glad to learn that Ministers did not contemplate swamping the Legislative Council; that I was anxious to do what I could to meet my Ministers' views, but that I must have some time to reflect.

4. At the interview which I had with Mr. Ballance yesterday morning, at which the Attorney General was also present, I said that I had carefully weighed the arguments of the Premier in favour of appointing twelve (12) Members; that I admitted that appointments should be made; but that, after considering the reasons given by the late Governor against agreeing to the proposal made to him just before he left the Colony, which was identical with the one made to me,

me, I found myself in accord with Lord Onslow, and that I was unable to agree to more than eight (8) appointments, though as soon as a resignation, which had been announced by telegraph, became an accomplished fact I would agree to fill up this vacancy, making in all nine (9) appointments.

5. I remarked that when Ministers made this application they must have had one of two objects in view. They must either wish such an amount of debating power as would enable them to place their measures fully before the Legislative Council, or they must aim at giving the Government a preponderance of votes in that Chamber. If the first is their desire, then, I said, I hoped they would accept my proposal, though it gave them less than they asked for; for, I said, I need hardly point out that in an assembly of forty-five (45) members (which would be the number with the addition I proposed) an accession of nine (9) skilled debaters, added to the five (5) supporters Government already had, would be amply sufficient to ensure the Government measures that respectful consideration which is their due. If the latter is their wish, I said, they will not accept my offer. If it is so, I would much regret that, so soon after my arrival, I should be obliged to decline a proposal made me by my Ministers; but I felt that, if I granted it, I would be running the risk of making the Legislative Council a mere echo of the other House; if it is to have no opinion of its own it is of no use, but if it continues to preserve its liberty, and gives the country time to reconsider such questions as may not have received due consideration, it may, at a critical time, be of invaluable service to the Colony. I therefore felt bound to take the course I had announced, as granting a larger number might have the effect of destroying the independence of one of the two Chambers, which I am bound by the Constitution to uphold.

6. The Premier declined to admit that my definition of the possible objects of Ministers was the correct one. He said there was a third alternative, which was the correct one, and that the number I proposed was not sufficient. It was large enough to exasperate the Opposition, but not large enough to be "of any use;" a statement which confirmed me in my opinion, that what the Government really requires is a majority in the Legislative Council, and that I was right in my definition.

7. Both Mr. Ballance and Sir Patrick Buckley said that many of their supporters are opposed to a bi-cameral system, although they themselves are not, and that if nothing is done to improve the position of matters in the Upper House, and if a cry is got up for the abolition of the Legislative Council, it would be so strong that it would bear down all opposition. I replied that Ministers were holding out to me, as an alternative, an emasculated Upper House or none at all; but that I was bound to uphold, as far as I could, the Constitution of the country. I said I was making them an offer, not much less than what they desired, and repeated that an addition of nine (9) would give them a sufficient number to place their policy properly before the Council. I added that the question of bringing the two Houses into harmony, which I believed would be the practical upshot if I granted the application of Ministers, could not arise until the Chambers declined to give effect to the result of an appeal to the country, and that had not yet happened.

8. Mr. Ballance undertook to communicate my decision to the Cabinet, and in the afternoon he informed me that he had done so; that they considered an addition of nine (9) to the Legislative Council worse than useless, and that they cannot, therefore, accept it; that they will reintroduce into Parliament the measures that were not passed last Session, and if they are not carried they will appeal to the country.

9. Your Lordship will observe that my especial difficulty has been this, that I have not had at my disposal any means of ascertaining the exact amount of nominations that could have been given without altering the balance of parties in the Upper House, and that I had, therefore, no alternative but to take up the position of, and act on the information supplied me by, my predecessor. I felt this so much that I said to Mr. Ballance that, if he cordially concurred in the step, I would send for the Leader of the Opposition in the Council, and ask him to tell me frankly if the number required by Ministers would imperil his majority. Mr. Ballance replied that it would make a precedent of an unusual

character (which I admitted, remarking that the occasion was an unusual one), and said that the Opposition Leader would be bound to give no reply that would please the Government.

10. I have thus, my Lord, done my best to perform my duty adequately in the very difficult position in which I have been placed. I have looked at the matter from a constitutional point of view. Within a fortnight of the date of my taking the oath to preserve the Constitution of the Colony, I have been called upon to increase, for party purposes, the Upper House to a point which might have given the Government a preponderance in it which they would not otherwise possess before an appeal has been made to the country. If I had given way, it might have tided over the difficulty for the time, but it would have established a precedent, which would most certainly have been followed by the Opposition, whenever its turn of power arrives.

The policy of the Government may be to bring the Legislative Council into disrepute, with a view to its abolition, or it may be only intended to frighten the Council into passing the measures of the Government. I do not believe that the Legislative Council will be abolished easily; but if abolition does come, I submit to your Lordship that the ending of the Chamber would be preferable to its retention in a condition so manipulated as to possess merely a semblance of independence.

I have, &c.
(signed) *Glasgow.*

The Right Hon. The Lord Knutsford,
Downing-street, London.

— No. 7. —

Lord *Knutsford* to the Earl of *Glasgow.*

TELEGRAPHIC.

[Answered by Nos. 8 and 112.]

10 August 1892.

* No. 6. THE figures in your Despatch of 22nd June* show that the Legislative Council consists of 31 Members of the Opposition and 5 Ministerialists.

If 12 were added to the latter, a large Opposition majority would still remain; therefore the proposal of Premier seems to me a reasonable one. The existence of an Upper House largely disproportionate to what appears to be the present political feeling in the Colony may be imperilled unless a more even balance of parties is secured. Despatch will be sent by mail.

— No. 8. —

The Earl of *Glasgow* to Lord *Knutsford.*

(Received 11th August 1892.)

TELEGRAPHIC.

11 August 1892.

FROM information which I have received, I consider that the Legislative Council consists of the Speaker, 12 Ministerialists, and 22 Members of the Opposition, four of these Councillors being absent from the Colony.

† No. 6. The difference between these figures and the estimate of Premier, as I reported in my Despatch of the 22nd June,† is accounted for by disapproval of certain measures which were not brought before the country at Election, and which deprive the Government of considerable support in the Council.

Reference from Ministers to the Secretary of State for the Colonies on this subject leaves by post to-day, with my remarks.

— No. 9. —

The Earl of *Glasgow* to Lord *Knutsford.*

(Received 15th September 1892.)

[Answered by Nos. 10 and 11.]

My Lord, Wellington, 8th August 1892.

I HAVE the honour to forward herewith a memorandum from my Ministers, dated 5th August, calling your attention to a difference which has occurred, to my deep regret, between myself and them, regarding appointments to the Legislative Council. I addressed a Despatch on the 22nd day of June,* giving all information on the subject up to date, and I now annex a schedule containing a list of papers bearing on the subject, the papers themselves accompanying this Despatch. *No. 6.

I submit that the memorandum contains something more than a statement of the difference between us; it is also an expression of opinion that greater power should be given to Ministers than they at present possess. I would now respectfully offer a few remarks upon the result of granting the powers Ministers think should be given them.

Let it be supposed that in a Colony possessing representative institutions, Ministers resign, appeal to the country, are defeated and replaced by the Opposition. On coming into power, the new Ministry introduces—as Ministers are not unlikely to do—a measure which it thinks will be popular, besides that which they were returned to carry out. The Legislative Council throws it out, the Ministry advises the Governor to appoint sufficient Legislative Councillors to overcome opposition in the Chamber; the people have not been consulted and support the arguments advanced in the Council, but (supposing Ministers have the power they think should be theirs) the Governor must grant the appointments asked for; the result would be that the Council is coerced, the measures are passed, and the people come under the law to which they may object and on which they have not been consulted.

The two Houses of the New Zealand Parliament possess each at present absolute liberty of speech; but, under the proposed change, the freedom of the Legislative Council would be at the mercy of the Ministry; the consent of both Chambers is now necessary before a measure can receive the Governor's assent. Should a measure be thrown out, it is open to Ministers to appeal to the country; thereafter, if the Legislative Council were to disregard the wishes of the Electorate as expressed at the polls, a sufficient emergency would then have arisen to justify the Governor in granting Ministers a sufficient number of appointments to bring the Upper House into harmony with the country.

This is, I submit, the constitutional practice, and it is more in accordance with the principles of freedom that the people should be the ultimate Court of Appeal in any difference between the Chambers, than that the power should rest with Ministers.

In a Despatch dated 19th October 1839, Lord John Russell says, "Every "political Constitution, in which different bodies share political power, is only "enabled to exist by the forbearance of those among whom this power is "distributed."

I would add that if the Constitutional checks which experience has placed on the power of the different bodies is swept away, the result will be, a distinct loss of liberty to the Colony, and almost absolute power to the Ministry.

The late Lord Granville, in a Despatch to Lord Belmore dated 2nd October 1869,† writes as follows: "When writing that Despatch, I was fully aware that "the number of the Upper House was unlimited. I was also fully aware that "on certain critical occasions it may become not only expedient but indis- "pensable to bring the two Houses into harmony by creating or threatening to "create a number of Legislative Councillors sufficient for that purpose, but it "is not the less clear that the value and character of the Upper House will be "destroyed if every successive Ministry is at liberty, without sufficient occasion, "to obtain a majority in the Council by the creation of Councillors." † See Appendix I. p. 81.

I respectfully submit that this extract, and the one foregoing, breathe just as much of the spirit of the Constitution of the present day as when they were written, and that they are opposed to the view held by my Ministers.

With these remarks, I now beg to leave that branch of the subject for your Lordship's consideration.

With reference to my reasons for not accepting the advice of Ministers, your Lordship will be already aware that only two days had elapsed after my arrival in the Colony, when the Premier waited on me and tendered the advice my refusal to accept of which has given rise to this Despatch.

When I asked for delay that I might make myself acquainted with the subject, Mr. Ballance explained that to enable his supporters to settle down to their work in Parliament it was absolutely necessary that this question should be settled and the appointments made before Parliament met, which event occurred on the 23rd of June.

Whatever may be your Lordship's opinion of the course I have pursued, you will not fail to observe that my position was one of considerable difficulty; the same advice that was tendered to me had been offered to my predecessor, who, with his three years' experience of the Colony, had not been able to accept it: his secret memorandum on the subject lay before me. I had not had time to examine the matter for myself. I was confronted with a reason for immediate decision, as to the value of which I had not had time to decide; the difference between the number declined by Ministers and the number they would accept was so small that I could not think the reasons given were sufficient to account for their action, and they appeared to be so incommensurate with the gravity of the step they took of creating a difference with the Governor, that I felt convinced that much more cogent reasons should be given than I had yet heard before I would be justified in accepting the advice tendered by Ministers.

For any further information on the subject I would refer your Lordship to the communications which have passed between myself and the Ministers dated the 27th July, the 2nd, 4th, 5th, 8th, 9th August, and also to the other papers which are mentioned in the accompanying schedule.

Before closing this Despatch I would beg to remark that this unfortunate difference between myself and the Ministers could not have occurred were the appointments to the Legislative Council made on a fixed principle.

If the Act for amending the mode of appointing Legislative Councillors were further amended in the following direction, the system would, except in an emergency, be self-adjusting.

I would enact that the strength of the Council should bear a fixed proportion to that of the House of Representatives; that it should be increased or decreased *pari passu* with the other Chamber, as occasion may require; that vacancies be filled up within three months of their occurrence by the Governor on the advice of Ministers; that a clause be inserted giving the Governor the power to appoint, on the advice of Ministers on an *emergency*, such a number of new Councillors as would bring the Council into harmony with the country; some such enactment as this would effectually prevent any future differences.

Since this paragraph was written I have ascertained that in the year 1887 the late Sir Frederick Whittaker obtained a Committee of the Legislative Council to consider and report as to the best plan of reducing the numbers of the Council to one-half of the number of the Members of the House. He had previously moved to that effect, and also that the same proportion should thereafter be maintained.

The Committee reported in favour of the proposal, but no further action was taken.

From this it is clear that the Council in 1887 affirmed the general principles which I have ventured to suggest.

If there is anything in the manner in which I have brought this question under your Lordship's notice not entirely consonant with the usual practice I beg you will attribute it to the unusual circumstances in which I have been placed, so soon after my arrival in the Colony.

I now leave the matter in your Lordship's hands, in the most perfect confidence that you will do me the justice to believe that I have been actuated solely by a desire to do what is best for the interests of the great and important Colony in which it is my privilege and pride to have been placed.

I have, &c.
(signed) *Glasgow.*

The Right Hon.
The Lord Knutsford, &c., &c.,
Secretary of State for the Colonies.

Enclosure 1 in No. 9.

MINISTERS respectfully desire, through his Excellency, to direct the attention of the Right Honourable the Secretary of State for the Colonies, to a difference between his Excellency the Governor and his Ministers, on a question which Ministers think involves the status of a self-governing Colony of the Empire.

The facts are briefly as follows:—Immediately after the last general election the then Governor, Lord Onslow, appointed upon advice, seven members to the Legislative Council. The Government of Sir Henry Atkinson was, as the result of the election at the time, in a minority, and resigned office upon the day of the meeting of Parliament. Mr. Ballance was sent for to form an Administration and his Government was supported by a large majority of the House of Representatives. A short session was held, and the General Assembly was prorogued to enable the Government to bring down their policy in another session. In that session their principal measures were carried by large majorities in the House, but some of the vital points of policy in these measures were defeated by still larger majorities in the Legislative Council, the position of the Government in the second Chamber on the question being represented by adverse votes of 18 to 5.

In the majority were included six out of the seven members (the seventh being the Speaker) appointed on the advice, at the time, of a defeated Ministry. During the recess, and shortly before Lord Onslow's departure from the Colony, Mr. Ballance advised his Excellency to appoint twelve members, as the least number thought necessary to allow the Government to be fairly represented in the second Chamber, and to enable the legislative and other functions which constitutionally pertain to this branch of the Legislature to be adequately performed.

Between the time of Mr. Ballance's Government being formed and when advice was tendered to Lord Onslow there had been six deaths, one vacation through absence, and leaves of absence extending over the next ensuing session, while it was notorious that several Members were, through old age, extremely unlikely to attend the next meeting of Parliament. Notwithstanding these facts, Lord Onslow refused to appoint a greater number of Councillors than eight, which number Ministers refused to accept. Lord Onslow left a confidential memorandum* (which he was good enough to submit to Mr. Ballance for perusal) for his successor in which was contained an extract from a Wellington Opposition newspaper extremely hostile to the Government, containing reasons for not accepting the advice of Ministers. The responsibility was transferred from Lord Onslow to his successor, Lord Glasgow.

* *See* page 23.

Between the departure of Lord Onslow and the arrival of Lord Glasgow the strength of the Council was still further diminished by one death. Upon the arrival of Lord Glasgow Mr. Ballance tendered his Excellency the same advice as he had given Lord Onslow, namely, to call 12 new members to the Council. His Excellency declined to accept the advice, but offered to appoint eight, with an additional member when the written resignation, telegraphed by the Agent-General, of the Honourable Randall Johnson arrived in the Colony. Ministers declined to accept a less number than they advised. Since then a Member of the Council, the Speaker, Sir Harry Atkinson, has died, while another has resigned. In this position the question remains.

Ministers would point out that the Parliament is in session, and they are answerable to the House of Representatives for the advice tendered to his Excellency. It has been alleged that they ought to have resigned when their advice was declined, but they relied on the constitutional practice as expressed in "Todd's Parliamentary Government in the British Colonies, 1880," p. 590, which is as follows: "They would be responsible for the advice they gave, but "could not strictly be held accountable for their advice not having prevailed; "for, if it be the right and duty of the Governor to act in any case contrary "to the advice of his Ministers, they cannot be held responsible for his action, "and should not feel themselves justified in retiring from the administration of "public affairs."

Ministers are of opinion that the responsibility of appointments to the Council should

should have rested with the responsible advisers of his Excellency, and that the refusal to accept their advice is in derogation of the rights and privileges of a self-governing Colony. In this case his Excellency is placed in the position of acting without advice, unless it be the advice of persons who are not responsible, and withdraws from those responsible the confidence which the Constitution requires him to repose in them, upon the inadequate ground that nine are preferable to 12 additions to the Council.

It is further to be observed that while the advice of a Government that had just been defeated at a general election was accepted, the advice of a Ministry enjoying the confidence of a large majority of the representatives of the people is declined. Ministers, in fact, are impelled to the conclusion that the way in which their advice has been treated is more in harmony with the methods of a Crown Colony than with the practice followed in a great self-governing Colony which has long enjoyed the advantages of a free Constitution and a wide autonomy within the limits of the Empire.

Premier's Office, Wellington,
5 August 1892.

(signed) *J. Ballance.*

SCHEDULE of Enclosures to Despatch of 8th August 1892 from the Earl of *Glasgow*, Governor of New Zealand, to the Right Honourable The Lord *Knutsford*, the Secretary of State for the Colonies.

1. A compilation of Acts and Instruments relating to the Constitution and Government of New Zealand.*

* Not printed.

2. An Act of the General Assembly of the Colony of New Zealand, entitled an Act to alter the mode of appointments to the Legislative Council.

3. Secret memorandum left behind him in Government House, Wellington, by the late Governor, the Earl of Onslow, accompanied by:—

(*a*) List of the several Premiers to whom present Councillors owe their seats.

(*b*) Memorandum showing the manner in which the Councillors appointed at Sir H. A. Atkinson's instance exercised their votes on Government Bills.

(*c*) and (*d*) Papers laid on the Table of the House in New South Wales with reference to appointments to the Legislative Council.†

† Printed as an Appendix. p. 69.

(*e*) List of Government measures, or measures supported by the Government, and rejected in the Upper House, 1891.

(*f*) Article from "Evening Post" with alterations expressing the view which Lord Onslow took in public of the duties of the Governor with respect to appointments to the Legislative Council.

(*g*) Remarks of the Premier on this Memorandum of Lord Onslow.

4. Excerpt from "Hansard" on the 24th June, question asked by the Leader of the Opposition, and the Premier's reply.

5. Return showing the strength of the Legislative Council for the last fifteen years.

6. Return to the House of Representatives, dated 30th June 1892, showing the names of the present Members of the Legislative Council, the dates of their appointments, and the names of the Premiers in office, with notes thereto by the Governor.

7. Memorandum from the Governor to the Premier, dated 27th July 1892.

8. Memorandum from the Premier to the Governor, dated 2nd August 1892.

9. Memorandum from the Governor to the Premier, dated 4th August 1892.

10. Memorandum

10. Memorandum from the Premier to the Governor, dated 5th August 1892.

11. Memorandum from the Governor to the Premier, dated 8th August 1892.

12. Memorandum from the Premier to the Governor, dated 9th August 1892.

Enclosure 2 in No. 9.

1891. ANALYSIS. No. 25.

Title.
1. Short Title.
2. Appointment of Members.
3. Members to hold office for seven years only. Saving as to existing Members.
4. Vacancies.
5. Questions as to Vacancies to be decided by Council. Appeal.
6. Quorum. Decision of Questions. Casting-vote.
7. Election of Speaker.
8. Clerk of Council to be Clerk of Parliaments.
9. Definition of "public defaulter."
10. Repeal. Saving of Appointments, &c.
11. When Act to come into force.
12. Privileges granted to retiring Members.

AN ACT to alter the Mode of making Appointments of Members of the Legislative Council of New Zealand, and to regulate Vacancies therein. Title.

17 September 1891.

Be it enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:--

1. The Short Title of this Act is "The Legislative Council Act 1891." Short Title.

2. The Governor may from time to time, in Her Majesty's name, by an instrument or instruments under the Public Seal of the Colony, summon to the Legislative Council of New Zealand (hereinafter called the "Council") such persons as he shall think fit, and every person so summoned shall thereby become a Member thereof: Provided that no person shall be so summoned: Appointment of Members.

(1.) Who shall not be of the full age of 21 years, and either a natural-born subject of Her Majesty, or a subject of Her Majesty naturalised by or under any Act of the Imperial Parliament or by or under an Act of the General Assembly of New Zealand; or

(2.) Who at any time theretofore has been bankrupt and has not received his discharge, or who has been attainted or convicted of any treason, felony, or infamous offence within any part of Her Majesty's dominions, or as a public defaulter within the Colony, unless he has received a free pardon, or has undergone the sentence or punishment to which he was adjudged for such offence.

3. From and after the passing of this Act, every person who shall be appointed Member of the Council shall hold his seat therein for seven years, to be reckoned from the date of the instrument of his appointment, and no longer; but every such person may from time to time be reappointed. Members to hold office for seven years only.

Nothing in this Section contained shall apply to any Member of the Council who was appointed thereto before the passing of this Act. Saving as to existing Members.

4. The seat of any Member of the Council, whether appointed thereto before the time of the passing of this Act, or subsequently thereto, shall *ipso facto* be vacated:— Vacancies.

(1.) If he takes any oath or makes any declaration or acknowledgment of allegiance, obedience, or adherence to any foreign Prince or Power; or

(2.) If he does, or concurs in, or adopts any act whereby he may become a subject or citizen of any foreign State or Power, or is entitled to the rights, privileges, or immunities of a subject of any foreign State or Power; or

(3.) If he is a bankrupt, or compounds with his creditors under any Act for the time being in force; or

(4.) If he is a public defaulter, or is attainted of treason, or is convicted of felony or any infamous crime; or

(5.) If he resigns his seat by writing under his hand addressed to and accepted by the Governor; or

(6.) If for more than one whole Session of the General Assembly he fails, without permission of the Governor notified to the Council, to give his attendance in the Council.

Questions as to vacancies to be decided by Council.

5. Any question which shall arise within the Council as to any vacancy in the Council, or as to the right of any person to sit or vote therein, shall be referred by the Governor to the Council, which shall hear and determine the same:

Appeal.

Provided always that either the person respecting whose seat such question shall have arisen, or Her Majesty's Attorney-General for New Zealand on Her Majesty's behalf, may appeal from the determination of the said Council to Her Majesty; and the judgment of Her Majesty, given with the advice of Her Privy Council thereon, shall be final and conclusive to all intents and purposes.

Quorum.

6. The number of Members of the Council necessary to constitute a meeting for the exercise of its powers shall be regulated from time to time by Standing Orders of the Council.

Decision of questions.

All questions which shall arise in the Council shall be decided by a majority of votes of the Members present, other than the Speaker, and when the votes

Casting-vote.

shall be equal the Speaker shall have the casting-vote.

Election of Speaker.

7. Whenever, after the passing of this Act, the office of Speaker of the Legislative Council becomes vacant the said Council shall have the power and authority to elect one of its Members to fill the vacancy; and the Speaker so elected shall remain in office for five years, unless his seat as a Member of the Council becomes sooner vacant by resignation or effluxion of time or otherwise.

Clerk of Council to be Clerk of Parliaments.

8. The Clerk of the Legislative Council for the time being, so long as he shall hold such office, shall hold the office of Clerk of the Parliaments.

Definition of "public defaulter."

9. A "public defaulter" in this Act means any person who is convicted of wrongfully expending, using, or taking any moneys the property of Her Majesty, or of any local authority, or of any corporation represented by a local authority.

Repeal.

10. Sections 33, 35, 36, 37, 38, and 39 of the Constitution Act, "The Legislative Council Quorum Act 1865," and "The Clerk of Parliaments Act 1872," are hereby respectively repealed. Section 34 of the Constitution Act shall not apply to any future appointments to the Council.

Saving of appointments, &c.

Notwithstanding such repeal, all existing appointments of Speakers, Members, or officers respectively in the said Council, and all existing Standing Orders of the said Council, shall continue in force as if this Act had not been passed.

When Act to come into force.

11. On this Act coming into operation the Imperial Act passed in the 31st and 32nd years of the reign of Her Majesty, chapter 57, shall cease to have any further operation.

Privileges granted to retiring Members.

12. Any Member of the Legislative Council at the time of this Act becoming law, and who shall voluntarily resign such position, shall thereafter be entitled to a free railway pass over the New Zealand railways so long as such railways remain the property of the Colony, and shall also have access to the Parliamentary Library for the remainder of his life.

Enclosure 3 in No. 9.

MEMORANDUM from Lord *Onslow* to Lord *Glasgow*, 16th February 1892.

MEMORANDUM for His Excellency the Earl of *Glasgow*.

ON the 13th of February the Honourable the Premier expressed the desire of his Cabinet to submit to me the names of eighteen gentlemen for seats in the Legislative Council.

The first question which arose in my mind was how far I ought, seeing that your Excellency's appointment as my successor had been announced, to undertake responsibility in the matter.

Upon reflection, however, I satisfied myself that having closely followed Mr. Ballance's recent utterances on the subject and the debates in Parliament on similar appointments last year (for which some blame was cast both on my advisers and myself), I had no right to shrink from doing any action upon such advice of my Ministers as I thought they were constitutionally entitled to give.

I do not think it necessary to enter at length upon the circumstances attendant on the creation of the Speaker and six Councillors last year; the reasons which guided me in that action are fully set forth in the public Despatches printed and laid before Parliament, as well as in my Despatches of the 24th of January and 3rd of February 1891.

I may add, however, that the position of parties was remarkably similar to that which occurred in New South Wales subsequently.

There, instead of enrolling themselves under the banner of one party, the Labour Members announced that their support would be given to either party "in return for concessions," and Sir Henry Parkes, the Premier, whom it was loudly proclaimed had been "beaten at the polls," continued in power with the help of Labour Members for a short time.

There was nothing to prevent a similar thing having taken place here in respect to Sir Henry Atkinson's administration, had it not been for his own ill-health.

Mr. Ballance claims that he is entitled to make seven appointments to counterbalance these, and six more at least to take the place of deaths which have occurred since (one of the deaths has been of a newly-appointed Councillor), on the ground that on taking office he might have advised six or seven creations, and then have advised more consequent on deaths.

It is to be borne in mind, however, that the six made by Sir H. Atkinson's advice were the first for three years and subsequent to the deaths of a considerable number of Councillors.

The latter contention would limit Mr. Ballance's requirements to twelve new men.

I made careful enquiry into the names of the Premiers to whose advice the existing Councillors owe their seats, and to their voting last session.

Before the appointment of Sir George Grey as Premier, I am content to assume that as far as existing party distinctions are concerned none can be called of *Liberal type*. Since then Sir George Grey, Sir Julius Vogel, and Sir Robert Stout have advised the appointment of fifteen out of the thirty-nine.

Mr. Ballance contends that Sir Julius Vogel was not a Liberal Premier, and that his influence on the Stout-Vogel coalition Government was so great that one-half of the appointments made on their advice were of the political complexion of Sir Julius Vogel and not that of Sir Robert Stout.

Whether the existence of any such understanding can be taken officially into account is a matter for your Excellency's consideration.

It became apparent then to my mind that it would not be easy to justify to the Secretary of State my action, were I to consent to add such a number of Councillors to the fifteen created by Liberal Governments as could give them a majority over the existing majority of Councillors appointed by other Governments—15 + 12 would make 27—the remaining Councillors would number but 24.

I should have been accused of lending myself to a scheme which might alter the complexion of the Upper House in order to enable the Ministry of the day to carry measures upon which the voice of the country had not been directly heard, and without the direct authority of the electors given to the proposal to bring the Upper House into harmony with the Lower.

Under those circumstances I declined to receive advice such as was proposed, and desired that it might be deferred until your Excellency's arrival, inasmuch as my stay in the Colony would not enable me to see the end of consequences which a persistent refusal to accept the advice of my Ministers would entail.

Your Excellency will find that of the principal measures introduced by or supported by the Government last session their financial Bills were carried in the Council. The Factories Act and a few others passed with amendment, while the Land Bill and the Electoral Bill were lost in conference with the other House. The Land for Settlement Bill, Workmen Lien, and Counties Bill, were rejected by majorities less than would have been counterbalanced by eight more appointments, the maximum to which I saw my way to accede, while the Shop Hours Bill and the Payment of Members Bill were rejected by very large majorities, not so great, however, as to remain unaffected if additions to the extent of Mr. Ballance's original proposal (18) were to be made.

16 February 1892. (signed) *Onslow.*

LIST of the several Premiers, to whom the present Legislative Councillors owe their seats.

Premier in office at date of appointments,

Stafford.	Fox.	Hall.
Domett.	Vogel.	Whitaker.
Weld.	Atkinson.	Stout.

MEMORANDUM by the Clerk to the Legislative Council showing how the Legislative Councillors appointed in 1891 exercise their Votes on Measures introduced by the Government.

Session 2. 1891.

Hon. Mr. Bowen.

Legislative Council Bill:
3 Divisions. — Voted 2 with Government. Voted 1 against.

Aliens Bill:
1 Division. — Voted 1 against Government.

Truck Bill:
1 Division. — Voted 1 against Government.

Auctioneers Bill:
3 Divisions. — Voted 2 against Government. Absent 1.

Factories Bill:
9 Divisions. — Voted 9 against Government.

Shop Hours Bill:
1 Division. — Voted 1 against Government.

Female Suffrage Bill:
1 Division. — Voted 1 with Government.

Electoral Bill:
8 Divisions. — Voted 6 against Government. Absent 2.

Land Bill: 15 Divisions.	Voted 14 against Government. Absent 1.
Payment of Members' Bill: 2 Divisions.	Voted 2 against Government.
Selectors Land Revaluation Bill: 1 Division.	Voted 1 against Government.
Workman's Lien Bill: 2 Divisions.	Voted 1 against Government. Voted 1 with Government.
Land for Settlement Bill: 1 Division.	Voted 1 against Government.

Hon. Mr. Fulton.

Legislative Council Bill: 3 Divisions.	Voted 1 with Government. Voted 2 against.
Aliens Bill: 1 Division.	Voted 1 against Government.
Truck Bill: 1 Division.	Voted 1 against Government.
Auctioneers Bill: 3 Divisions.	Voted 1 with Government. Voted 1 against. Absent 1.
Factories Bill: 9 Divisions.	Voted 5 with Government. Voted 4 against.
Shop Hours Bill: 1 Division.	Voted 1 against Government.
Female Suffrage Bill: 1 Division.	Voted 1 against Government.
Electoral Bill: 8 Divisions.	Voted 8 against Government.
Land Bill: 15 Divisions.	Voted 3 with Government. Voted 11 against Government. Absent 1.
Payment of Members Bill: 2 Divisions.	Voted 1 with Government. Voted 1 against.
Selectors Land Revaluation Bill: 1 Division.	Voted with Government.
Workman's Lien Bill: 2 Divisions.	Voted 2 with Government.
Land for Settlement Bill: 1 Division.	Voted 1 against Government.

Hon. Mr. Johnston.	
Legislative Council Bill:	
3 Divisions.	Voted 2 with Government. Voted 1 against.
Aliens Bill:	
1 Division.	Voted 1 against Government.
Truck Bill:	
1 Division.	Voted 1 against Government.
Auctioneers Bill:	
3 Divisions.	Voted 2 against Government. Absent 1.
Factories Bill:	
9 Divisions.	Voted 2 against Government. Absent 7.
Shop Hours Bill:	
1 Division.	Voted 1 against Government.
Female Suffrage Bill:	
1 Division.	Voted 1 against Government.
Electoral Bill:	
8 Divisions.	Voted 4 against Government. Absent 4.
Land Bill:	
15 Divisions.	Voted 12 against Government. Voted 1 with Government. Absent 2.
Payment of Members Bill:	
2 Divisions.	Voted 2 against Government.
Selectors Land Revaluation Bill:	
1 Division.	Voted 1 against Government.
Workman's Lien Bill:	
2 Divisions.	Voted 1 against Government. Voted 1 with Government.
Land for Settlement:	
1 Division.	Absent.
Hon. Mr. Ormond.	
Legislative Council Bill:	
3 Divisions.	Voted 2 with Government. Voted 1 against.
Aliens Bill:	
1 Division.	Absent.
Truck Bill:	
1 Division.	Absent.
Auctioneers Bill:	
3 Divisions.	Voted 1 with Government. Voted 1 against. Absent 1.
Factories Bill:	
9 Divisions.	Absent.
Shop Hours Bill:	
1 Division.	Voted 1 against Government.
Female Suffrage Bill:	
1 Division.	Voted 1 against Government.

Electoral Bill:	
8 Divisions.	Voted 7 against Government.
	Absent 1.
Land Bill:	
15 Divisions.	Voted 14 against Government.
	Absent 1.
Payment of Members Bill:	
2 Divisions.	Voted 2 against Government.
Selectors Land Revaluation Bill:	
1 Division.	Voted 1 with Government.
Workman's Lien Bill:	
2 Divisions.	Voted 1 against Government.
	Absent 1.
Land for Settlement Bill:	
1 Division.	Voted 1 with Government.
Hon. Mr. Downie Stewart.	
Legislative Council Bill:	
3 Divisions.	Voted 1 with Government.
	Voted 2 against.
Aliens Bill:	
1 Division.	Voted 1 against Government.
Truck Bill:	
1 Division.	Voted 1 with Government.
Auctioneers Bill:	
3 Divisions.	Voted 1 against Government.
	Voted 2 with Government.
Factories Bill:	
9 Divisions.	Voted 4 with Government.
	Voted 5 against.
Shop Hours Bill:	
1 Division.	Voted 1 with Government.
Female Suffrage Bill:	
1 Division.	Voted 1 against Government.
Electoral Bill:	
8 Divisions.	Voted 3 with Government.
	Voted 5 against.
Land Bill:	
15 Divisions.	Voted 10 with Government.
	Voted 5 against.
Payment of Members Bill:	
2 Divisions.	Voted 1 with Government.
	Voted 1 against.
Selectors Land Revaluation Bill:	
1 Division.	Voted 1 with Government.
Workman's Lien Bill:	
2 Divisions.	Voted 2 with Government.
Land for Settlement Bill:	
1 Division.	Voted 1 with Government.

Hon. J. B. Whyte.	
Legislative Council Bill:	
3 Divisions.	Absent.
Aliens Bill:	
1 Division.	Voted 1 against Government.
Truck Bill:	
1 Division.	Voted 1 against Government.
Auctioneers Bill:	
3 Divisions.	Voted 1 with Government. Absent 2.
Factories Bill:	
9 Divisions.	Voted 2 with Government. Absent 7.
Shop Hours Bill:	
1 Division.	Voted 1 against Government.
Female Suffrage Bill:	
1 Division.	Voted 1 with Government.
Electoral Bill:	
8 Divisions.	Voted 3 with Government. Voted 5 against.
Land Bill:	
15 Divisions.	Voted 3 with Government. Voted 11 against. Absent 1.
Payment of Members Bill:	
2 Divisions.	Voted 2 against Government.
Selectors Land Revaluation Bill:	
1 Division.	Absent.
Workman's Lien Bill:	
2 Divisions.	Voted 2 with Government.
Land for Settlement Bill:	
1 Division.	Voted 1 against Government.

Rejected Bills.—Session 11.—1891.

Local omitted.

Aliens Act Amendment.	In Conference.
Counties Act Amendment.	By Legislative Council.
Electoral.	In Conference.
Female Suffrage.	By Legislative Council.
Friendly Societies Acts Amendment.	By Legislative Council.
Law Practitioners.	By Legislative Council.
Land Bill.	In Conference.
Land for Settlement.	By Legislative Council.
Payment of Members.	Laid aside by Legislative Council. (Not rejected.)
Shop Hours.	By Legislative Council.
Selectors Land Revaluation Continuance and Amendment.	By Legislative Council.
Workman's Lien.	By Legislative Council.

"Evening Post," Monday, 15 February 1892.

THE GOVERNOR'S LESSON.

[Alterations and comments of Lord Onslow shown in *Italics.*]

Nothing could have been more apt, better-timed, or more suggestively true than his Excellency Lord Onslow's remarks on Friday night respecting the position and functions of an Upper Chamber. He very clearly defined the legal and nominal prerogative of such a Chamber as limited by constitutional usage. His words were pregnant with meaning in the position of affairs in this colony at the present time, although they were, of course, quite of a general character. It would have been improper for him to have pointed the application of the principles he laid down, but it is easy for the most careless observer to read between the lines Paraphrased and simplified, his Excellency's remarks amount to this: that the constitutional function of a second Chamber is not to set up its own will in stubborn and immovable opposition to the will of the people, but to interpose such a cheque upon hasty legislation as shall give the people time to consider the subject fully, and to form and express a mature and decided opinion upon the questions at issue. For an Upper House to attempt to do more than this would, as Lord Onslow points out, be to admit that the common sense upon which Englishmen pride themselves no longer guided its action, and the inevitable result would be an irresistible movement for the abolition of such a Chamber. The House of Lords, the most time-honoured and Conservative of Upper Chambers, has never yet so set itself against the fulfilment of the well-considered and clearly-expressed popular will. Had it done so it would ere this have belonged to the things of the past. Conservative although its majorities have always been, it has gracefully yielded when unmistakeably shown that the matured opinion of the people was in favour of any measure of progress. The various Reform Bills at first unhesitatingly rejected by it have been accepted after direct reference of them to the people, and their receiving emphatic approval at the polling booths. The House of Lords, having made its protest, has ever yielded gracefully when the popular verdict has on appeal gone against it. It has never been necessary to resort to the once-threatened extreme expedient of swamping the House by a creation of Peers. Lord Onslow will himself return to England to take part in another early surrender of the views of the majority of his fellow Peers to those of the people. The House of Lords will undoubtedly reject the first Home Rule for Ireland Bill which the Commons may pass, and Lord Onslow will no doubt vote with the majority. Practically, of course, the question of Home Rule will be the issue on which the impending general election at home will depend, and if Mr. Gladstone returns to power a Home Rule Bill will certainly be passed by the House of Commons. But no matter what the majority there may be, the Bill will as certainly be rejected by the Lords. Then it will be Mr. Gladstone's duty to take his Bill to the constituencies, and ask them to express a direct opinion upon it. If such an appeal is made and answered by an emphatic expression of public approval, then the House of Lords will have fulfilled its constitutional duty, and Lord Onslow and his friends will, no doubt, with characteristic common sense, accept and yield to the will of the people. There will be no howl raised at home at the action of the Lords in refusing to accept the opinion expressed in the general election on the general question, and insisting on a specific reference of the Bill to the constituencies. It will be within its rights in thus delaying definite action, and no one will complain of such a course being adopted. So in like manner, and this, we take it, was the lesson intended to be conveyed in Lord Onslow's speech, has the Legislative Council been quite within its rights in refusing to pass all the policy measures of the present Government simply because they have been formulated by a Ministry chosen from the majority returned on general principles at the last general election. [The Council has a clear constitutional right to insist that the precise measures shall be specifically referred to the verdict of the constituencies] [*not every measure but every great fundamental change*]. Then if the people declare that they want these measures passed it will be the duty of the Council to bow to that opinion, however unwise they deem it. To oppose it further would be unconstitutional obstruction. The Government policy measures which the Council rejected last Session, and on which a most improper clamour against that Chamber has been raised, were the Payment of Members Bill, in respect to the largely-increased payment proposed;

the Land Bill, so far as the extinguishment of the freehold tenure is concerned; and the [re-purchase of private lands for settlement purposes] [*rejected by small majority*]. The Council is perfectly right in insisting that the deliberate sense of the country shall be taken on these proposals. Certainly they were not prominently before the country at the general election. The proper course for the Government to adopt is to appeal from the Council to the country on these measures [*or on the question of bringing the Upper House into harmony with the Lower*], instead of attempting to swamp the Council by the creation of new members without the country being consulted, or the using of wild threats with a view to coercing the Council into abandoning its constitutional position. Lord Onslow has in the most admirable manner pointed out to his Advisers the constitutional course which they should follow. If they pursue it, they will, we are convinced, find that the Council will accept the interpretation of its functions as laid down by the Governor, and act constitutionally with the common sense credited to it by his Excellency.

MEMORANDUM from the Premier.

The Premier presents his compliments to his Excellency, and has perused the Memorandum proposed to be left for Lord Glasgow. The Premier does not at present see the necessity of going into the question at length. The Government think that their position in the Council is such that the legislation demanded by the country cannot be given effect to, and that, in order to carry out the will of the people, as represented at the ballot-box, at least twelve new Councillors ought to be created. The Premier does not acknowledge the accuracy of the article contained in the "Evening Post," a journal personally and malignantly hostile to the Government.

(signed) *J. Ballance.*

Premier's Office, 16 February 1892.

His Excellency the Earl of Glasgow:

THE enclosed papers were shown to the Premier that he may know exactly what has taken place between Lord Onslow and his successor, but Lord Onslow judges that he is within his rights in leaving any memorandum he may think it right to leave for the information of his successor.

The article in the "Evening Post" only professes to interpret Lord Onslow's personal views, and Lord Onslow says that they accurately represent them.

The "Post" has also been, up to their article, "personally and malignantly "hostile to Lord Onslow," and it is not, therefore, for any reason that the article is appended except that it expresses in an easily-read form exactly that which Lord Onslow feels.

(Initialed) *O.*

16th February 1892.

Enclosure 4 in No. 9.

EXCERPT from "Hansard," 24th June 1892; Legislative Council.

Mr. Rolleston asked the Premier if the rumour which is current to the effect that Ministers have on two occasions during the recess tendered important advice to the Crown affecting the present constitution of the Upper House, and that the advice has not been accepted, is correct; and if so, will he state, for the information of this House, the particulars of the course which Ministers have taken, and what they propose to do under the circumstances?

Mr. Ballance said that to the first part of the question he had to reply that the rumour was correct, that during the recess the Governor had been advised to make such addition to the strength of the Legislative Council as would enable it more effectively to discharge its functions, and to perform them more in harmony with the opinion of the country, and that that advice had not been accepted.

In answer to the second part of the question he had to say that the Government had conveyed to his Excellency the advice that less than the addition of twelve members would not place the House in a state of efficiency. The course which Ministers might pursue would depend upon the course of legislation.

Enclosure 5 in No. 9.

Number of Members in the Legislative Council who have appeared on the Roll each year for the last 15 years:—

1878	No. of Councillors	46
1879	Ditto	49
1880	Ditto	46
1881	Ditto	43
1882	Ditto	47
1883	Ditto	50
1884	Ditto	49
1885	Ditto	53
1886	Ditto	53
1887	Ditto	49
1888	Ditto	45
1889	Ditto	43
1890	Ditto	39
1891	Ditto	46
1892	Ditto	35

Enclosure 6 in No. 9.

1892.—NEW ZEALAND.

PRESENT Members of the Legislative Council (Return showing Names of).

Return to an Order of the House of Representatives dated the 30th day of June 1892. —*Ordered*,—"That a Return be laid before this House showing the names of the present Members of the Legislative Council, the dates of their several appointments, and the names of the Premiers in office at the time such appointments were made."—(Hon. Sir *J. Hall.*)

—		Name of Member.	Date of Appointment.	Premier in Office.
	*	W. D. H. Baillie	8 March 1861	Stafford.
	*	Sir G. S. Whitmore	31 August 1863	Domett.
‡		J. B. A. Acland	8 July 1865	Weld.
		H. J. Miller (Speaker)	8 July 1865	Weld.
‡		W. B. D. Mantell	19 June 1866	Stafford.
‡		Mathew Holmes	19 June 1866	Stafford.
‡		Henry Scotland	24 February 1868	Stafford.
‡		J. A. Bonar	27 June 1868	Stafford.
‡		M. S. Grace	13 May 1870	Fox.
‡		Robert Hart	9 July 1872	Fox.
	*	Daniel Pollen	12 May 1873	Vogel.
‡		J. T. Peacock	9 October 1877	Atkinson.
	*	J. N. Wilson	23 November 1877	Grey.
	*	W. H. Reynolds	30 April 1878	Grey.
	*	Sir P. A. Buckley	25 July 1878	Grey.
	*	Patrick Dignan	3 February 1879	Grey.
‡		Richard Oliver	10 November 1881	Hall.
‡		George McLean	19 December 1881	Hall.
‡		E. C. J. Stevens	7 March 1882	Hall.
‡		Henry Williams	7 March 1882	Hall.
‡		J. W. Barnicoat	14 May 1883	Whitaker.
	*	C. W. A. T. Kenny	15 May 1885	Stout.
	*	G. B. Morris	15 May 1885	Stout.
	*	Robert Pharazyn	15 May 1885	Stout.
	*	Joseph Shephard	15 May 1885	Stout.
	*	S. E. Shrimski	15 May 1885	Stout.
	†	William Swanson	15 May 1885	Stout.
	†	H. K. Taiaroa	15 May 1885	Stout.
	†	Lancelot Walker	15 May 1885	Stout.
	†	Ropata Wahawaha	10 May 1887	Stout.
‡		C. C. Bowen	20 January 1891	Atkinson.
‡		C. J. Johnston	20 January 1891	Atkinson.
‡		J. D. Ormond	20 January 1891	Atkinson.
‡		W. D. Stewart	20 January 1891	Atkinson.
‡		J. B. Whyte	20 January 1891	Atkinson.
Totals		18 16		
		+ 4 — 4		
		22 12		

Colonial Secretary's Office, Wellington, 13 July 1892.

Hugh Pollen, Under-Secretary.

§ * Denotes supporters of the Government.
† Denotes supporters of the Opposition appointed by a Coalition Government, deducted from the Government supporters and added to the Opposition.
‡ Denotes the Opposition.
NOTE.—Including the Speaker this Council numbers 35.

§ N.B.—*The classification of this table and the notes are additions made by Lord Glasgow to the original return.*

Glasgow.

Enclosure 7 in No. 9.

MEMORANDUM for Ministers.

HIS Excellency has considered the draft Memorandum* left with him yesterday by the Premier, and he desires to make a few remarks upon it for the consideration of Ministers.

* *See* Enclosure 1.

He observes that the Memorandum, in quoting page 590 of Todd's "Parliamentary Government in the British Colonies, 1880," recognises that the difference between himself and Ministers is "a question of an Imperial "nature, in which," in a sense, "the general policy of the Empire is involved, "and in which it is the duty of a Governor to exercise the power vested in him, "in his capacity as an Imperial officer, without limitation or restraint."

That this is so is evident, because it is only under such circumstances that, according to the latter part of the same paragraph, Ministers can claim, that while they are responsible to Parliament for the advice they have given they cannot be strictly held accountable for their advice not having prevailed.

This being so, his Excellency is at a loss to understand how Ministers can be of opinion "that the responsibility of appointments to the Council should have "vested with the responsible advisers of his Excellency, and that the refusal to "accept their advice is in derogation of the rights and privileges of a self-"governing Colony;" and he desires to point out that no self-governing Colony possesses the right they claim.

With regard to the statement that in offering a smaller number of appointments than Ministers asked for, he withdrew "from those responsible the "confidence which the Constitution required him to repose in them," upon the inadequate ground that nine [9] are preferable to twelve [12] additions to the Council; in the first place he replies that he feels himself bound to resist their advice upon the ground that to grant the numbers Ministers asked for would be an unconstitutional interference with the liberties of the Legislative Council.

In the second place, considering that his Excellency is personally responsible to the Crown for the manner in which he exercises the prerogative right of making appointments to the Council, he considers that the difference between nine [9] and twelve [12] appointments is an inadequate reason for creating a question between his Excellency and Ministers.

Government House, Wellington,
27 July 1892.

(Initialed)
G.

Enclosure 8 in No. 9.

MEMORANDUM for His Excellency.

IN reply to his Excellency's Memorandum of the 27th ultimo, the Premier respectfully would observe that Ministers do not admit that the case is one in which "it is the duty of a Governor to exercise the power vested in him in "his capacity as an Imperial officer, without limitation or restraint." If this were so the Governor might make appointments to the Council without the advice of Ministers.

The reference of Ministers in the Memo. to the authority quoted (Todd) was merely a reply to the assumption of those who would contend that, while the appointment of Councillors was different from the ordinary exercise of the Governor's powers, Ministers were bound to resign if their advice was not taken.

That this limitation was placed on the quotation is evident from the fact that Ministers immediately proceeded to state their own opinion with respect to Ministerial responsibility.

The same authority goes on to say (Todd, page 590): "But according to "constitutional analogy, no right should be claimed by the Governor, except "in cases wherein, under the Royal Instructions, he is bound as an Imperial

"officer to act independently of his Ministers." Ministers do not find that in respect to the question under consideration such independence is expressed or implied in the Royal Instructions. They believe the powers referred to in the passage quoted are of a different character from those exercisable in the appointment of Members to the Legislative Council.

His Excellency states that "he feels himself bound to resist their advice "upon the ground that to grant the number Ministers asked for would be an "unconstitutional interference with the liberties of the Legislative Council."

This, Ministers submit, is the whole question at issue. They have given reasons why the appointment of twelve Members would be constitutional and proper, and they respectfully remark that his Excellency has stated no reason why nine would be constitutional and twelve unconstitutional, or upon what grounds it would be "an unconstitutional interference with the liberties of "the Legislative Council."

In reference to the last paragraph of his Excellency's Memorandum, Ministers do not agree that the Governor is "personally responsible to the Crown for the "manner in which he exercises the prerogative right of making appointments to "the Council" in any other sense than the exercise of responsibility upon the advice of his Responsible Advisers.

They would further observe that the appointment of Councillors is not a "prerogative right," but a statutory act under "the Legislative Council Act, "1891" (N. Z.).

His Excellency's attention is respectfully directed to Despatch of 11th April 1891 from Lord Knutsford to Lord Onslow, in which the Secretary of State remarks: "With regard to the appointments to the Legislative Council "recommended by the late Government, I am of opinion that, in accepting the "advice tendered to you by your Lordship's responsible Ministers under the "circumstances described in your Despatches, you acted strictly in accordance "with the Constitution of the Colony; but I do not desire to be understood to "offer any opinion upon the action of your Ministers in tendering that advice." The terms of this Despatch, Ministers are of opinion, show that the appointment of Councillors is not "a personal act" on the part of the Governor in the sense referred to by Todd in the passage cited by his Excellency.

Ministers agree with his Excellency that the difference between nine and twelve appointments is "an inadequate reason for creating a question between "his Excellency and Ministers," but they also think that this argument applies also to the effect on the "liberties of the Legislative Council" of the three appointments his Excellency has been unwilling to make. If these form an inadequate reason for creating a question between his Excellency and Ministers, they are as inadequate to deserve the name of "an unconstitutional interference "with the liberties of the Legislative Council."

Ministers thought, and were therefore bound to advise, that less than 12 would not be sufficient to enable the functions of the Council to be properly discharged. They also think their advice was not unreasonable or unconstitutional.

(signed) *J. Ballance,*

Premier's Office, Wellington,
2 August 1892.

Enclosure 9 in No. 9.

MEMORANDUM FOR THE PREMIER.

IN reply to the Premier's Memorandum of the 2nd August, the Governor notes that Ministers do not admit that the case is one in which it is the duty of a Governor "to exercise the power vested in him as an Imperial officer without "limitation or restraint;" in that he agrees with Ministers, and as the inference (which the Governor still thinks he was justified in drawing, from the reasons given by Ministers for not resigning) turns out to have rested on a misconception, the argument which he based on it falls to the ground, and it only remains for him to notice one or two points.

The

The Premier directs attention to the use the Governor made of the words "prerogative right." The sentence should have run thus, "considering that the "Governor is personally responsible to the Crown for the manner in which he "exercises the prerogative right in discriminating as to the number of appoint- "ments which ought to be made to the Council, he considers, &c., &c."

With regard to the statement that in the opinion of Ministers the appointment of Councillors is not a "personal act" on the part of the Governor, the Governor replies that the appointment of Councillors is, in his opinion, a matter in which he is not bound to follow the advice of his Ministers, except on the occasion of great emergency, and that precedents in the history of the Mother Country exist, sufficient to show what are to be considered such occasions; in ordinary circumstances the Governor would naturally accept Ministers' advice as to appointments, but occasions may arise when the Governor is of opinion that the appointments proposed may interfere with the balance of parties in the Upper House; in such a case it is essential in the interests of the Colony that appointments should only be made to such an extent as shall be safe.

In a Despatch written by Sir H. Robinson to Lord Kimberley on 27th August 1872, will be found the following:—"It will be seen that in every instance when "questions have arisen as to the appointment of additional members of Council, "the Governor has acted on his own responsibility without previous reference to "the Secretary of State, and that when the course adopted has been reported "home, the Secretary of State has simply expressed his opinion on the propriety "or otherwise of the previous proceedings."

The Governor adduces this extract as a proof that he is by no means the first Governor who has acted on his own responsibility on similar questions in Colonies possessing Responsible Government.

In a Despatch written by Lord Carnarvon to Lord Normanby in 1874, occurs the following:—"In a Colony having a Constitution such as Queensland, the "tendency to introduce a large addition to the number of the Legislative Council "for the purpose of giving effect to a particular course of policy, will from time to "time make itself felt. But if the balance of Constitutional power is not to be "more than a mere theory, it is clear that such a tendency cannot be encouraged "to take its full course. * * * It is prudent to avoid such an increase in the "number of Legislative Council, as may give a temporary advantage to one party, "thereby altering the Constitutional character and functions of the Legislative "Body, weakening its general influence, and possibly, if not provoking political "reprisals at some future day, at least encouraging a practice, which the more it "is indulged, the less easy will it be to restrain."

The Governor claims that the arguments used by Lord Carnarvon, though used under slightly different circumstances, meet the present case, in so far as that what Ministers ask would give them the right Lord Carnarvon deprecates.

In the Memorandum which Ministers propose should be sent to the Secretary of State, they aver that the responsibility of making appointments should have vested with the Responsible Advisers of the Governor; if this is conceded, then Ministers may give way to the tendency deprecated by Lord Carnarvon without check or hindrance; indeed nothing but their own moderation could hinder a strong Ministry, on entering office, from taking steps to bring the Upper House into harmony with the Lower, a step which the Governor need not remark can only be done constitutionally on an occasion of great emergency.

In reply to Ministers' remark that the Governor has given no reason for thinking that it would be unconstitutional to grant twelve Members, and constitutional to grant nine, his reason was based on the best information he was able to give on his arrival in the Colony, and it is supported by the Return issued on the 13th July showing the names of present Members of Legislative Council, from which he finds that there are in the Council, excluding the Speaker, eighteen Councillors appointed by Conservative Governments, and sixteen appointed by Liberal Governments. But he understands that four of these appointed by Sir Robert Stout were really the appointments of coalition Members of his Ministry, and should therefore be counted as Conservatives. Taking four Members from the Liberals and giving them to the Conservatives brings on the numbers as twelve Government supporters against twenty-two

Opposition Members, or a difference of ten. The Governor, therefore, concludes that nine is the largest number he can offer.

The Governor is aware that the Premier does not agree that this is a proper measure of the strength of Parties, and he admits that it is not easy to come to a conclusion in a non-representative House, but the Governor believes that when new policy of an advanced kind is introduced in such a Chamber, Members vote according to their consciences and not on Party lines, and that when the criss is over, Members generally will return to their Party allegiance.

With regard to Ministers' reasons for preferring twelve, the Governor desires to point out that besides those given in the draft Memorandum addressed to the Secretary of State, which practically meant efficiency, the Premier, in his reply to the Leader of the Opposition on the 24th June, gave a reason of a different nature, the gist of which was, that the Governor had been advised to grant such appointments as would enable the Chamber more efficiently to discharge its functions, and to perform those functions more in harmony with the feelings of the country.

The latter phrase confirms the Governor in the opinion that he should not grant more than the number he has offered, and having reconsidered the whole question, he finds that he cannot recede from the position he has taken up, and he will be prepared to forward Ministers' Memorandum to Her Majesty's Secretary of State for the Colonies, and he begs that he may have it not later than Friday evening (5th instant).

4 August 1892. (signed) *Glasgow.*

Enclosure 10 in No. 9.

MEMORANDUM for His Excellency.

MINISTERS have read his Excellency's Memo. of the 4th inst., and are glad to recognise that his Excellency does not insist on the position of "an Imperial "officer, without limitation or restraint;" that his Excellency is bound to accept the advice of his Ministers "on the occasion of a great emergency," and that "in ordinary circumstances the Governor would naturally accept Ministers' "advice as to appointments," but they cannot admit that his Excellency has been well informed that the proposed appointments would "interfere with the "balance of Parties."

In reply to the remark of Ministers that no reason had been given that it would be unconstitutional to grant twelve members and constitutional to grant nine, his Excellency replies that "his reason was based on the best information "he was able to get on his arrival in the Colony, and it is supported by the "Return issued on the 13th July, showing the names of the present Members of "the Legislative Council." Ministers would observe that "the best information" referred to was never submitted to them in order that its character or source might have been examined by responsible Ministers, so that they might have had the opportunity of advising his Excellency upon it, and they desire to express their astonishment and regret that a course should have been taken which tends to discredit the Government.

That the information referred to is supported by the Return is not shown. His Excellency has apparently made a mistake in respect to the Members appointed by Conservative and Liberal Governments. In the Memo. of Ministers of the 2nd August they gave the numbers as 26 and 9, whereas his Excellency states the numbers as 22 Opposition Members and 12 Government supporters. His Excellency believes that "when the crisis is over Members "generally will return to their Party allegiance."

Ministers do not know of any "crisis," and think that there is as little likelihood of Members returning to their Party allegiance as there is of a Whig who had become Tory after being made a Peer returning to his allegiance to Mr. Gladstone. The precedents are so few for such a reversion in politics that they prove the rule that once Members leave the Liberal fold they leave for good. The "crisis" in this instance is the well-developed policy of the

the Liberal Party in the country, which an overwhelming majority of Tory gentlemen in the Legislative Council have found themselves in a position to mutilate and destroy.

Nor do Ministers understand why the phrase used by the Premier "to "perform those functions more in harmony with the freedom of the country" should confirm the Governor in the opinion that he should not grant more than the number he has offered Ministers respectfully submit that the Governor, being neutral in politics, is in no way permitted by the spirit of the Constitution to do anything that will prevent the feeling of the country from being expressed in legislation. It would indeed be a dangerous doctrine, keeping in view the friendly relations that should exist between the Colony and the Mother country, that the representative of Her Majesty should consider it to be his duty to thwart the people of the Colony in giving expression to their feelings and opinions.

Ministers do not consider the authorities quoted in his last Memo. by his Excellency, are applicable in the present case, and they need not be more particularly noticed.

Ministers thank his Excellency for the intimation that he will forward their Memorandum to the Secretary of State, and they respectfully request that the whole of the Memoranda on the subject may be forwarded at the same time

Premier's Office, Wellington,
5 August 1892.

(signed) *J. Ballance.*

Enclosure 11 in No. 9.

MEMORANDUM for the Premier.

THE Governor, in reply to Ministers' Memorandum of the 5th inst., does not propose to make any comment upon it, except in the first place to explain that "the best information he was able to obtain" was procured solely from public documents and the Memorandum left by Lord Onslow.

In the second place, with regard to the passage where Ministers submit "that the Governor being neutral in politics, is in no way permitted by the "spirit of the Constitution to do anything which will prevent the feelings of "the country from being expressed by legislation," he wishes it to be distinctly understood that the sentence quoted accurately expresses the principle which has actuated him in the course he has adopted. The country should not in any way be prevented from expressing its feeling as to legislation.

The fact is, that the idea underlying the whole case of Ministers is that whatever measures an Administration brings forward are certain to express the feeling of the country.

The Governor directly traverses that assumption, and points out that the suspensory powers conferred by the Constitution on the Second Chamber is a constitutional check intended to give power to the Electorate, through the intervention of the Legislative Council at any time to step in and control legislation.

This plan ensures greater freedom to the Electorate than that favoured by Ministers.

The Governor sees no reason for continuing the correspondence, and he intends to send the series of communications between Ministers and himself, of which this is the last, along with the reference which he has been asked to send to the Secretary of State for the Colonies.

8 August. (signed) *Glasgow.*

Enclosure 12 in No. 9.

MEMORANDUM for His Excellency.

MINISTERS beg to acknowledge the receipt of his Excellency's Memorandum of the 8th inst., and desire to notice one or two matters therein. His Excellency remarks that the "best information he was able to obtain was procured solely from public documents, and the Memorandum left by Lord "Onslow." Ministers reply that no public documents have ever been submitted to them by his Excellency of any kind bearing on the question, and they have had no opportunity of expressing any opinion upon them. The same observation will apply to the Memorandum left by Lord Onslow in so far as it was treated confidentially, and although a Memorandum (probably that referred to) was sent the Premier for his inspection, no copy was kept, and his Excellency has never asked for the opinion or advice of Ministers on this confidential Memorandum. Moreover the circumstances affecting the Council have greatly changed since the departure of Lord Onslow, and his Memorandum could hardly be supposed to express the present condition of affairs.

Ministers take exception to the statement "that the idea underlying the "whole case of Ministers is that whatever measures an Administration bring "forward are certain to express the feeling of the country." It would be more correct to say that measures passed by large majorities of the House of Representatives within eighteen months of its election are sufficient to entitle Ministers to the confidence of his Excellency, and to express in terms not to be misundertood in a self-governing community that the measures do express the feeling of the country.

Ministers notice that his Excellency points out "that the suspensory powers "conferred by the Constitution on the Second Chamber is a constitutional check "intended to give power to the Electorate through the intervention of the "Legislative Council at any time to step in and control legislation," and that "this plan ensures greater freedom to the Electorate than that favoured by "Ministers." Ministers reply that the argument if applied in practice would prove immediately destructive to the Constitution. It means that with the sanction and support of the Governor the Council is at all times to possess the power to impose a penal dissolution on the country; that a Nominee Chamber is to be accepted as a better judge or exponent of the feelings of the country than the representatives of the people; and that a decisive majority in the Second Chamber is to be maintained by the representative of Her Majesty in order to "control legislation." It also means that a majority irresponsible for its acts may harass, by the expense and worry of an election, the representative body, and it suggests the fatal position that the Governor is to be associated with the Council as to the practical application of the doctrine.

If Ministers could believe that this was the true intent and meaning of the Constitution they would despair of its survival beyond the popular recognition of the fact, but they have not so read it, and hope, for the sake of the Constitution, that such a construction may not prove to be accurate.

The construction may be stated (in accordance with actual facts in recent history) to be this. A majority in the Legislative Council should be in harmony with the minority in the House of Representatives when the Liberals are in power, with a penal dissolution suspended over the heads of the Government; but when the Conservatives are in power they should have majorities in both Chambers without the "Constitutional check." If the first plan ensures "greater freedom to the Electorate," it is difficult to describe the constitutional bearings of the second. Yet Ministers have asked for no more than a respectable minority in the Second Chamber. It is against the application of such constitutional doctrines as these that Ministers respectfully enter their protest.

Ministers

Ministers thank his Excellency for the information that the series of correspondence will be sent to the Secretary of State, and request that this Memorandum may be included.

Premier's Office, Wellington, (signed) *J. Ballance.*
9 August 1892.

— No. 10. —

The Marquess of *Ripon* to the Earl of *Glasgow.*

TELEGRAPHIC.

[Answered by Nos. 13 and 14].

24 September 1892.—I HAVE carefully considered your Despatch of 8th August*, and appreciate difficulties of your position, but I have no hesitation in advising you to accept your Ministers' advice. * No. 9.

It does not appear to be a case of swamping the Legislative Council. The Division lists of that body should be considered rather than politics of Premiers who originally nominated the Members.

I will state fully my reasons by Despatch, but you should at once re-open matter with your Ministers and waive your objections to their proposals.

The Agent General is anxious for information which I cannot withhold after to-morrow, but I am anxious to give you an opportunity of making your own announcement to your Ministers.

— No. 11. —

The Marquess of *Ripon* to the Earl of *Glasgow.*

[Answered by No. 16].

Downing-street,
My Lord, 26 September 1892.

I HAVE the honour to acknowledge the receipt of your Despatch of the 8th August* respecting the question which had arisen between yourself and your Ministers with regard to certain proposed nominations to the Legislative Council of New Zealand. * No. 9.

This question has been referred for my consideration by agreement between you and your Ministers. I have carefully considered it, and in so doing I desire to say that I fully appreciate the difficult position to which you succeeded immediately on your arrival in the Colony, to assume for the first time the duties of a Colonial Governor.

I had, however, no hesitation, in advising you by telegraph on the 24th instant,* to accept the recommendation of your Lordship's Ministers; and I now proceed to indicate the reason which led me to that conclusion. * No. 10.

The Legislative Council, as I understand, consisted, at the date of your Despatch, of 35 Members, and your Government proposed that to this number an addition should be made of 12, making altogether a Chamber of 47 Members, a number which is not larger than that which has existed in previous years, and the case is therefore distinguishable from those in other Colonies when it was proposed to make so many additions that the Chamber would have exceeded all former limits.

In the House of 35 Members, I gather that your Government could only rely on the consistent support of five. I do not assume that the remaining 30 Members could all be considered as opposed to the policy of your Ministers, but it seems to me that your Government is entitled to hold that it is not adequately represented, either for speaking or voting purposes, in the Upper Chamber, and that if the 12 Members were added as they desire they would only have 17 consistent supporters in a House of 47. In considering this aspect of the question, I am clearly of opinion that the only fair and satisfactory mode of estimating the representation of the present Government in the Legislative Council, and of judging whether their claim to be allowed fuller representation is one to which no constitutional objection can be taken, is to examine the results of the voting in that House on the measures with which the Government of the day is identified.

I cannot, therefore, conclude that the proposed appointments constitute one of those cases to which the term "swamping" has been applied, in which the proposed addition of Members at the instance of the Government for the time being has been so great, in proportion to the balance of parties in the Upper Chamber, as to overthrow that balance altogether.

Your Lordship was willing to appoint nine new Members, and your Government desired that 12 should be appointed. It can hardly be considered that the difference between these limits is so great or important as to require a Governor to assume the very serious responsibility of declining to act on the advice of his Ministers, and possibly of having in consequence to find other advisers. Moreover it must be remembered that these appointments under the Colonial Law of 1891 will be for seven years only, and not for life, as in the case of some other Colonies possessing a nominated Upper House.

I have therefore dealt with the merits of the particular case on which my advice has been sought. But I think it right to add that a question of this kind, though in itself of purely local importance, presents also a constitutional aspect which should be considered on broad principles of general application.

When questions of a constitutional character are involved it is especially, I conceive, the right of the Governor fully to discuss with his Ministers the desirability of any particular course that may be pressed upon him for his adoption. He should frankly state the objections, if any, which may occur to him, but if, after full discussion, Ministers determine to press upon him the advice which they have already tendered, the Governor should, as a general rule, and when Imperial interests are not affected, accept that advice, bearing in mind that the responsibility rests with the Ministers, who are answerable to the Legislature, and, in the last resort, to the country.

A Governor would, however, be justified in taking another course if he should be satisfied that the policy recommended to him is not only, in his view, erroneous in itself, but such as he has solid grounds for believing, from his local knowledge, would not be endorsed by the Legislature or by the Constituencies.

In so extreme a case as this, he must be prepared to accept the grave responsibility of seeking other advisers; and I need hardly add, very strong reasons would be necessary to justify so exceptional a course on the part of the Governor.

I have &c.

The Earl of Glasgow. (signed) *Ripon.*

— No. 12. —

The Earl of *Glasgow* to the Secretary of State for the Colonies.

(Received 27th September 1892.)

My Lord, Wellington, 16 August 1892.

I HAVE the honour to acknowledge the telegram which I received on the 11th inst.* from the Secretary of State for the Colonies, a copy of which is forwarded by this mail to the Colonial Office in the usual manner; also a copy of my telegram† in reply to above.

* No. 7.

† No. 8.

I trust that the latter made my estimate of the strength of the Council clear to his Lordship, the late Secretary of State; I regret that he found it necessary to telegraph, because I am obliged to infer that he could not have received any Despatch on the subject from my predecessor.

Your Lordship will be aware that the same advice that I declined to accept was tendered by Ministers to Lord Onslow just before he left New Zealand; and that he left a confidential Memorandum‡ addressed to his successor, detailing what had happened and giving his reasons.

‡ Enclosure 3 in No. 9.

It was only because I was persuaded that these reasons had been fully laid before the Secretary of State for the Colonies that I refrained from going fully into them, although I gave my reasons for their adoption in writing my Despatch of the 22nd June.§

§ No. 6.

With regard to the present position of the difference between myself and my Ministers, I have the honour to report that the Premier called on me yesterday and tendered my Ministers' advice that, in response to a question put by Sir George Grey, in the House of Representatives, I should agree to lay before Parliament Ministers' reference to the Secretary of State, as well as all other despatches bearing on the subject.

Although I believe it to be contrary to usual practice to lay before a Local Parliament a reference to the Secretary of State before the reply is received, yet, considering the peculiar circumstances, that it is the strong desire of Ministers that they should be produced, that Ministers have advised me to agree to this production, and that I could not conceive of any injury that would be done to the public service by doing so, I agreed to accept their advice, and the correspondence will be laid before Parliament to-morrow; I have, however, declined to produce my Despatch of the 22nd June,‖ although I agreed, in case of Ministers thinking it well to yield this point, to telegraph to you for leave to lay that Despatch also on the table. I also agreed to lay on the table my Despatch of 8th August,¶ as I thought it only right that my remarks in my Ministers' reference should be laid before Parliament at the same time.

‖ No. 6.

¶ No. 9.

I have, &c.
(signed) *Glasgow.*

The Right Hon. the Secretary of State
for the Colonies, &c., &c.,
Downing-street.

— No. 13. —

The Earl of *Glasgow* to the Marquess of *Ripon.*

(Received 27th September 1892.)

TELEGRAPHIC.

No. 10. RECEIVED your telegram; acted according to your advice.

— No. 14. —

The Earl of *Glasgow* to the Marquess of *Ripon.*

(Received 29th September 1892.)

TELEGRAPHIC.

(Extract.)

†No. 10. ON receipt of your advice† I at once waived my objections. Two days afterwards I sent text to Ministers who laid it before Parliament best possible results. My relations with Ministers quite satisfactory.

— No. 15. —

The Earl of *Glasgow* to the Marquess of *Ripon.*

(Received 5th January 1893.)

[Answered by No. 18].

My Lord, Auckland, 2 December 1892.

I HAVE the honour to inform you that I have made twelve (12) appointments to the Legislative Council in accordance with the advice of my Ministers as set forth in the extract from the Supplement of the "New Zealand Gazette," which I have the honour to enclose.

I have, &c.
(signed) *Glasgow.*

The Right Hon.
The Marquess of Ripon, K.G., &c., &c.,
Colonial Office, London, S.W.

Enclosure in No. 15.

EXTRACT from the Supplement to the "New Zealand Gazette" of Thursday, 13th October 1892.

MEMBERS of Legislative Council appointed.

Colonial Secretary's Office, Wellington,
15 October, 1892.

HIS Excellency the Governor has, in Her Majesty's name, summoned—

William McCullough, Esq., of Auckland.
William Jennings, Esq., of Auckland.
Thomas Kelly, Esq., of New Plymouth.
The Hon. Edward Richardson, C.M.G., of Wellington.
John Rigg, Esq., of Wellington.
William Montgomery, Esq., of Christchurch.
John Edward Jenkinson, Esq., of Christchurch.
William Campbell Walker, Esq., of Christchurch.
James Kerr, Esq., of Greymouth.
William Mouat Bolt, Esq., of Dunedin.
John MacGregor, Esq., of Dunedin, and
Henry Feldwick, Esq., of Invercargill,

to the Legislative Council of New Zealand, by writs of summons under the Seal of the Colony.

P. A. Buckley.

— No. 16. —

The Earl of *Glasgow* to the Marquess of *Ripon.*

(Received 5th January 1893.)

[Answered by No. 17].

My Lord, Auckland, 3 December 1892.

I HAVE the honour to acknowledge the receipt of your Despatch, dated 26th September 1892,* which enters fully into your reasons for advising me to accede to the advice of my Ministers with regard to the Legislative [Council] Appointments.

* No. 11.

2. I beg your Lordship to believe that I fully appreciate the consideration which you have shown me in this matter; the incident is now closed, and it is in no controversial spirit that I venture to make some remarks on your Despatch, but simply because, by means of the light thrown on the affair by the proceedings of the Legislative Council during the last Parliamentary Session, I think that it would be well to consider the conclusions to be drawn from what has occurred.

3. Your Lordship was perhaps justified in assuming that the question had been referred to you by agreement between myself and my Ministers. Strictly speaking, I was a party to the reference, but it was only because I did not consider that it would be proper for me to decline to forward a memorandum when asked by my Ministers to do so; personally, I have always been strongly of

opinion that, under the Constitution of New Zealand, the question might have been solved in accordance with the traditions of Constitutional Government within the Colony, but I did not think I had any right to express any such opinion to your Lordship, or to appear to interfere with the undoubted right of my Ministers to appeal to the Secretary of State.

4. It is evident that when I declined to accept my Ministers' advice they were not willing to resign, but it appears to me that when a difference arises between a Governor and his advisers, the only justification for it is its importance, and this can only be gauged by the result.

5. If after an exchange of ideas the Governor incurs the responsibility of adhering to his own view, and the Ministers consider the case sufficiently important, they should resign; if they do not do so, they should give way, but my Ministers did neither, and I submit that a Colony possessing responsible Government, and with the means of putting pressure on the Governor, which Ministers in such a Colony possess, an appeal to the Colonial Office to interfere between the Governor and themselves is not a course that would naturally be expected from a Ministry with a proper conception of the rights and privileges of a self-governing Colony.

6. In this case the question as to whether I or my Ministers most correctly estimated the effect of the proposed appointments can best be judged, as I think your Lordship will agree, by an examination of the Division Lists of the Legislative Council during the past Session.

7. From the Returns which I have the honour to enclose, it will be seen that without any addition to the Council, out of thirty-seven (37) Government measures introduced, all were carried except two, that had the nine (9) appointments been accepted, the Government would have had the majority in every Division in the Legislative Council except five (5), and that if twelve (12) appointments had been made, the Government would have been victorious in every Division except one.

8. The effect of the twelve (12) appointments may therefore be considered to be that the Government has now by their means obtained the majority in the Council, a result which I thought it my duty to do what I could to resist.

9. It is therefore apparent to me that had your Lordship, on receiving the Ministers' memorandum, replied that you thought the question was one that could be settled more satisfactorily on the spot, there would have been an entire collapse of the situation, for the simple reason that the results of the Session have proved that the assumption that nine (9) appointments were insufficient to give the Government adequate support rested on an unsubstantial basis, and that I was sufficiently justified in the position I took up.

10. The information derived from this result was, of course, only available after your Lordship's decision became known.

11. With regard to the different opinions expressed by your Lordship and myself as to which method formed the most reliable basis of calculation, as to the strength of the Government in the Legislative Council, I submit that further experience proves that neither would have foreshadowed approximately the result shown by the returns, and my opinion is that the Legislative Council as a body has voted in this Session according to conviction, tempered by a feeling that in those cases in which the Country's opinion is known, the Council should give way.

12. In conclusion I beg to remark respectfully, that I do not feel that my personal position has in any way been detrimentally affected by the fact that your decision has been against my view, but I submit that the experience gained by a review of the whole incident may be expressed in the following sentence:—That the practice of referring the differences between Colonial Governors and their Ministers to the Colonial Office, of the calibre at least of the one in question, is not one to be encouraged; the great Colonies all possess the inestimable boon of self-government as fully and freely as does the Mother Country.

13. The

13. The range of questions in which the Governor has any discretion is reduced to a vanishing point, and what has happened does not make his task on such occasions any easier; and on any occasion where a difference unfortunately occurs it should be remembered that the policy of leaning on the Colonial Office is not one that commends itself to Colonists generally.

I have, &c.
(signed) *Glasgow.*

To the Right Honourable
The Marquess of Ripon, K.G., &c., &c., &c.
The Colonial Office, London, S.W.

Enclosure 1, in No. 16.

COPY of Division Lists, Legislative Council, Session 1892, to 3rd October 1892.

SUMMARY of Divisions which have been taken in the Legislative Council in Council exclusive of Divisions taken in Committee * of the Council.

	Ayes.	Noes.	Number Voting.
July 14	16	5	21
„ 14	6	19	25
„ 14	6	18	24
August 2	18	2	20
„ 2	5	12	17
„ 12	11	12	23
„ 23	4	16	20
September 9	10	11	21
„ 13	15	8	23
„ 13	4	16	20
„ 20	4	13	17
„ 28	13	6	19

* Divisions in Committee. Separate lists herewith.

3 October 1892.

L. Stowe, Clerk of Parliaments.

LEGISLATIVE COUNCIL, NEW ZEALAND.

DIVISION LIST, Wednesday the 28th day of September 1892.

Subject:—Factories Bill.

Question put, *That* the Bill be now read the second time.

Ayes, 13.	Noes, 6.
The Hon. Captain Baillie.	The Hon. Mr. Hart.
„ Mr. Barnicoat.	„ Mr. Holmes.
„ Sir P. A. Buckley, K.C.M.G.	„ Mr. C. J. Johnston.
„ Mr. Dignan.	„ Mr. Ormond.
„ Dr. Grace.	„ Dr. Pollen.
„ Mr. Pharazyn.	„ Mr. Stevens.
„ Mr. Reynolds.	
„ Mr. Stewart.	
„ Mr. Swanson.	
„ Mr. Taiaroa.	
„ Major Wahawaha.	
„ Mr. Whyte.	
„ Mr. Williams.	

DIVISION LIST, Tuesday the 20th day of September 1892.

Subject:—Otago Harbour Board Empowering Bill to be committed,
Hon. Dr. Grace's Amendment, 6 months.

Questions put, *That* that the word proposed to be omitted stand part of the q estion.

Ayes. 4.	Noes, 13.
The Hon. Captain Baillie.	The Hon. Mr. Barnicoat.
„ Sir P. A. Buckley, K.C.M.G.	„ Mr. Dignan.
„ Mr. Stewart.	„ Dr. Grace.
„ Mr. Walker.	„ Mr. Holmes.
	„ Mr. C. J. Johnston.
	„ Mr. McLean.
	„ Captain Morris.
	„ Mr. Oliver.
	„ Mr. Pharazyn.
	„ Dr. Pollen.
	„ Mr. Stevens.
	„ Mr. Swanson.
	„ Mr. Williams.

DIVISION LIST, Tuesday the 13th day of September 1892.

Subject :—Arms Act Repeal Bill to be now committed.

Question put, *That* the word proposed to be omitted stand part of the question.

Ayes, 4.	Noes, 16.
The Hon. Captain Baillie.	The Hon. Mr. Barnicoat.
„ Sir P. A. Buckley, K.C.M.G.	„ Mr. Hart.
„ Mr. Dignan.	„ Mr. Holmes.
„ Captain Morris.	„ Mr. McLean.
	„ Mr. Oliver.
	„ Mr. Ormond.
	„ Mr. Pharazyn.
	„ Dr. Pollen.
	„ Mr. Reynolds.
	„ Mr. Stevens.
	„ Mr. Stewart.
	„ Mr. Swanson.
	„ Mr. Walker.
	„ Major Wahawaha.
	„ Sir G. S. Whitmore, K.C.M.G.
	„ Mr. Williams.

NOTICE OF MOTION, Tuesday, the 13th day of September 1892.

The Hon. Mr. Stevens to move, That this Council is of opinion that, in taking a poll on any proposal for local borrowing, whether under a general or special Act, the proposal submitted to the ratepayers should not be deemed to be carried unless two-thirds of the total votes given at the poll are in favour of the proposal, such votes being those of ratepayers the rateable value of whose property in the municipality, county, or district affected by the proposal amounts in the aggregate to one-half of the total rateable value of rateable property therein.

DIVISION LIST, Tuesday, the 13th day of September 1892.

Subject:—Hon. Mr. Stevens's motion.

Question put, *That* the motion be agreed to.

Ayes, 15.	Noes, 8.
The Hon. Captain Baillie.	The Hon. Mr. Barnicoat.
„ Sir P. A. Buckley, K.C.M.G.	„ Mr. Holmes.
„ Mr. Dignan.	„ Mr. McLean.
„ Dr. Grace.	„ Captain Morris.
„ Mr. Hart.	„ Mr. Oliver.
„ C. J. Johnston.	„ Dr. Pollen.
„ Mr. Ormond.	„ Sir G. S. Whitmore, K.C.M.G.
„ Mr. Pharazyn.	„ Mr. Whyte.
„ Mr. Reynolds.	
„ Mr. Stevens.	
„ Mr. Stewart.	
„ Mr. Swanson.	
„ Mr. Walker.	
„ Major Wahawaha.	
„ Mr. Williams.	

DIVISON LIST, Friday, the 9th day of September 1892.

Subject:—Otago Harbour Board Bill, Second Reading, adjourned Debate, to reserve Friday.

Question put, *That* "Friday" stand part of the question.

Ayes, 10.	Noes, 11.
The Hon. Mr. Dignan.	The Hon. Captain Baillie.
„ Dr. Grace.	„ Mr. Barnicoat.
„ Mr. Holmes.	„ Sir P. A. Buckley, K.C.M.G.
„ Mr. C. J. Johnston.	„ Mr. Hart.
„ Mr. McLean.	„ Mr. Pharazyn.
„ Mr. Oliver.	„ Mr. Reynolds.
„ Mr. Ormond.	„ Mr. Stevens.
„ Dr. Pollen.	„ Mr. Swanson.
„ Mr. Taiaroa.	„ Major Wahawaha.
„ Mr. Whyte.	„ Sir G. S. Whitmore, K.C.M.G.
	„ Mr. Williams.

DIVISION LIST, Tuesday, the 23rd day of August, 1892.

Subject:—Eight Hours Bill now read second time; Amendment, this day six months.

Question put, *That* the words proposed to be cancelled stand part of the question.

Ayes, 4.	Noes, 16.
The Hon. Captain Baillie.	The Hon. Mr. Barnicoat.
„ Sir P. A. Buckley, K.C.M.G.	„ Mr. Dignan.
„ Mr. Stewart.	„ Mr. Hart.
„ Major Wahawaha.	„ Mr. Holmes.
	„ Mr. McLean.
	„ Mr. Oliver.
	„ Mr. Ormond.
	„ Mr. Pharazyn.
	„ Dr. Pollen.
	„ Mr. Reynolds.
	„ Mr. Scotland.
	„ Mr. Stephens.
	„ Mr. Swanson.
	„ Mr. Taiaroa.
	„ Mr. Walker.
	„ Sir G. S. Whitmore, K.C.M.G.

DIVISION LIST, Friday the 12th day of August 1892.

Subject: Bible Reading in Schools Bill; second reading.

Question put, *That* that question be now put.

Ayes, 11.	Noes, 12.
The Hon. Captain Baillie.	The Hon. Sir P. A. Buckley, K.C.M.G.
„ Mr. Barnicoat.	„ Mr. Dignan.
„ Mr. Hart.	„ Dr. Grace.
„ Mr. Holmes.	„ Mr. C. J. Johnston.
„ Mr. McLean.	„ Mr. Ormond.
„ Captain Morris.	„ Mr. Pharazyn.
„ Mr. Oliver.	„ Dr. Pollen.
„ Mr. Reynolds.	„ Mr. Scotland.
„ Mr. Stewart.	„ Mr. Stevens.
„ Major Wahawaha.	„ Swanson.
„ Mr. Williams.	„ Sir G. S. Whitmore, K.C.M.G.
	„ Mr. Whyte.

DIVISION LIST, Tuesday the 2nd day of August 1892.

Subject: Testamentary Trusts Restriction Bill to be committed; motion made Speaker do leave the chair, &c.; amendment, omit all words after That, insert the Report of the Statutes Revision Committee on the Bill be agreed to.

Question put, *That* the words proposed to be omitted stand part of the question.

Ayes, 5.	Noes, 12.
The Hon. Sir P. A. Buckley, K.C.M.G.	The Hon. Mr. Barnicoat.
„ Mr. Dignan.	„ Dr. Grace.
„ Mr. Walker.	„ Mr. Holmes.
„ Major Wahawaha.	„ Mr. C. J. Johnston.
„ Sir G. S. Whitmore, K.C.M.G.	„ Mr. McLean.
	„ Mr. Oliver.
	„ Dr. Pollen.
	„ Mr. Reynolds.
	„ Mr. Scotland.
	„ Mr. Stewart.
	„ Mr. Swanson.
	„ Mr. Williams.

NOTICES of MOTION, Tuesday the 2nd day of August 1892.

1. The Honourable Mr. Reynolds to move, That Standing Orders relative to local Bills be so far suspended as to allow the Cook and Waiapu Counties Property Adjustment Bill to be proceeded with.

Subject: Hon. Mr. Reynolds's motion.

Question put, *That* the motion be agreed to.

Ayes, 18.	Noes, 2.
The Hon. Captain Baillie.	The Hon. Mr. McLean.
„ Mr. Barnicoat.	„ Dr. Pollen.
„ Sir P. A. Buckley, K.C.M.G.	
„ Mr. Dignan.	
„ Dr. Grace.	
„ Mr. Holmes.	
„ Mr. C. J. Johnston.	
„ Mr. Mantell.	
„ Captain Morris.	
„ Mr. Oliver.	
„ Mr. Reynolds.	
„ Mr. Scotland.	
„ Mr. Stewart.	
„ Mr. Swanson.	
„ Mr. Walker.	
„ Major Wahawaha.	
„ Sir G. S. Whitmore, K.C.M.G.	
„ Mr. Williams.	

NOTICES of MOTION, Thursday the 14th day of July, 1892.

1. The Honourable Mr. McLean to move, That the name of the Honourable Mr. McLean be discharged from the Consolidated Stock Committee.

DIVISION LIST, Thursday, the 14th day of July 1892.

Subject: Hon. Mr. McLean's motion, No. 1.

Question put, *That* the motion be agreed to.

Ayes, 6.	Noes, 18.
The Hon. Mr. Bonar.	The Hon. Captain Baillie.
„ Mr. C. J. Johnston.	„ Mr. Barnicoat.
„ Mr. McLean.	„ Sir P. A. Buckley, K.C.M.G.
„ Mr. Ormond.	„ Mr. Dignan.
„ Dr. Pollen.	„ Mr. Hart.
„ Mr. Scotland.	„ Captain Kenny.
	„ Captain Morris.
	„ Mr. Pharazyn.
	„ Mr. Reynolds.
	„ Mr. Shrimski.
	„ Mr. Stevens.
	„ Mr. Swanson.
	„ Mr. Taiaroa.
	„ Mr. Walker.
	„ Major Wahawaha.
	„ Sir G. S. Whitmore, K.C.M.G.
	„ Mr. Whyte.
	„ Mr. Williams.

DIVISION LIST, Thursday, the 14th day of July 1892.

The Honourable Mr. McLean to move, That the name of the Honourable Sir P. A. Buckley, K.C.M.G., be added to the Consolidated Stock Committee.

Subject: The Hon. Mr. McLean's motion, No. 2.

Question put, *That* the motion be agreed to.

Ayes, 6.	Noes, 19.
The Hon. Mr. Bonar.	The Hon. Captain Baillie.
„ Mr. Hart.	„ Mr. Barnicoat.
„ Mr. McLean.	„ Sir P. A. Buckley, K.C.M.G.
„ Dr. Pollen.	„ Mr. Dignan.
„ Mr. Scotland.	„ Mr. C. J. Johnston.
„ Mr. Stevens.	„ Captain Kenny.
	„ Captain Morris.
	„ Mr. Oliver.
	„ Mr. Ormond.
	„ Mr. Pharazyn.
	„ Mr. Reynolds.
	„ Mr. Shrimski.
	„ Mr. Swanson.
	„ Mr. Taiaroa.
	„ Mr. Walker.
	„ Major Wahawaha.
	„ Sir G. S. Whitmore, K.C.M.G.
	„ Mr. Whyte.
	„ Mr. Williams.

DIVISION LIST, Thursday, the 14th day of July 1892.

Subject: New Zealand Institute of Surveyors Bill to be committed.

Question put, *That* the Honourable the Speaker do now leave the chair.

Ayes, 16.	Noes, 5.
The Hon. Captain Baillie.	The Hon. Mr. Barnicoat.
„ Mr. Bonar.	„ Captain Kenny.
„ Sir P. A. Buckley, K.C.M.G.	„ Mr. Scotland.
„ Mr. Dignan.	„ Mr. Shrimski.
„ Mr. Hart.	„ Mr. Swanson.
„ Mr. C. J. Johnston.	
„ Mr. McLean.	
„ Captain Morris.	
„ Mr. Oliver.	
„ Mr. Ormond.	
„ Mr. Pharazyn.	
„ Mr. Reynolds.	
„ Mr. Stevens.	
„ Mr. Taiaroa.	
„ Major Wahawaha.	
„ Mr. Whyte.	

DIVISION LIST, the 6th day of October 1892.

Subject: Payments of Members Bill, 2nd reading this day six months.

Question put, *That* the words proposed to be omitted stand part of the question.

Ayes, 12.	Noes, 7.
The Hon. Captain Baillie.	The Hon. Mr. McLean.
„ Mr. Barnicoat.	„ Mr. Oliver.
„ Sir P. A. Buckley, K.C.M.G.	„ Mr. Pharazyn.
„ Mr. Dignan.	„ Mr. Reynolds.
„ Dr. Grace.	„ Mr. Stevens.
„ Mr. Hart.	„ Mr. Stewart.
„ Captain Morris.	„ Mr. Swanson.
„ Dr. Pollen.	
„ Mr. Taiaroa.	
„ Mr. Walker.	
„ Major Wahawaha.	
„ Sir G. S. Whitmore, K.C.M.G.	

DIVISION LIST, the 8th day of October 1892.

Subject: Naval and Military Settlers and Volunteers Land Bill, second reading presently.

Question put, *That* the word "presently" stand part of the question.

Ayes, 12.	Noes, 7.
The Hon. Captain Baillie.	The Hon. Mr. Hart.
„ Mr. Barnicoat.	„ Mr. McLean.
„ Sir P. A. Buckley, K.C.M.G.	„ Mr. Oliver.
„ Mr. Dignan.	„ Dr. Pollen.
„ Dr. Grace.	„ Mr. Reynolds.
„ Mr. C. J. Johnston.	„ Mr. Stewart.
„ Mr. Mantell.	„ Mr. Taiaroa.
„ Captain Morris.	
„ Mr. Pharazyn.	
„ Mr. Swanson.	
„ Sir G. S. Whitmore, K.C.M.G.	
„ Mr. Whyte.	

DIVISION LIST, the 10th day of October, 1892.

Subject: Naval and Military Settlers and Volunteers Land Bill, second reading, amendment this day six months.

Question put, *That* the word "now" proposed to be omitted stand part of the question.

Ayes, 17.	Noes, 2.
The Hon Captain Baillie.	The Hon. Mr. McLean.
„ Mr. Barnicoat.	Mr. Reynolds.
„ Sir P. A. Buckley, K.C.M.G.	
„ Mr. Dignan.	
„ Dr. Grace.	
„ Mr. Hart.	
„ Mr. C. J. Johnston.	
„ Mr. Mantell.	
„ Mr. Oliver.	
„ Mr. Pharazyn.	
„ Mr. Stewart.	
„ Mr. Swanson.	
„ Mr. Taiaroa.	
„ Mr. Walker.	
„ Major Wahawaha.	
„ Sir G. S. Whitmore, K.C.M.G.	
„ Mr. Whyte.	

DIVISION LIST, the 10th day of October, 1892.

Subject: Westland and Nelson Coalfields Administration Act, 1877, Amendment.

Question put, *That* the amendments of the House of Representatives be agreed to.

Ayes, 16.	Noes, 2.
The Hon. Captain Baillie.	The Hon. Mr. Mantell.
„ Mr. Barnicoat.	Mr. Reynolds.
„ Sir P. A. Buckley, K.C.M.G.	
„ Mr. Dignan.	
„ Dr. Grace.	
„ Mr. Hart.	
„ Mr. McLean.	
„ Captain Morris.	
„ Mr. Oliver.	
„ Mr. Pharazyn.	
„ Mr. Stewart.	
„ Mr. Swanson.	
„ Mr. Walker.	
„ Major Wahawaha	
„ Sir G. S. Whitmore, K.C.M.G.	
„ Mr. Whyte.	

Enclosure 2 in No 16.

LEGISLATIVE COUNCIL.

COPY of Division Lists in Committees of the whole Council, Session 1892.

Number of Divisions - - - - - - - - 37

LEGISLATIVE COUNCIL, NEW ZEALAND.

DIVISION LIST, Friday, the 15th day of July 1892.

Subject: Unclaimed Lands Bill; Clause 15.

Question put, *That* word stand part of clause.

Ayes, 10.	Noes, 11.
The Hon. Mr. Barnicoat.	The Hon. Mr. Bonar.
„ Sir P. A. Buckley, K.C.M.G.	„ Mr. Hart.
„ Mr. Dignan.	„ Mr C. J. Johnston.
„ Dr. Grace.	„ Mr. Oliver.
„ Captain Kenny.	„ Mr. Pharazyn.
„ Captain Morris.	„ Mr. Scotland.
„ Mr. Ormond.	„ Mr. Shrimski.
„ Dr. Pollen.	„ Mr. Stevens.
„ Mr. Reynolds.	„ Mr. Swanson.
„ Mr. Williams.	„ Mr. Walker.
	„ Major Wahawaha.

DIVISION LIST, Friday, the 15th day of July 1892.

Subject: Unclaimed Lands Bill; Clause 15.

Question put, *That* word be inserted in place of word struck out.

Ayes, 10.	Noes, 12.
The Hon. Mr. Hart.	The Hon. Mr. Barnicoat.
„ Mr. C. J. Johnston.	„ Mr. Bonar.
„ Mr. Oliver.	„ Sir P. A. Buckley, K.C.M.G.
„ Mr. Pharazyn.	„ Mr. Dignan.
„ Mr. Shrimski.	„ Dr. Grace.
„ Mr. Stevens.	„ Captain Kenny.
„ Mr. Swanson.	„ Captain Morris.
„ Mr. Taiaroa.	„ Mr. Ormond.
„ Mr. Walker.	„ Dr. Pollen.
„ Major Wahawaha.	„ Mr. Reynolds.
	„ Mr. Scotland.
	„ Mr. Williams.

DIVISION LIST, Friday the 15th day of July 1892.

Subject: New Zealand Institute of Surveyors Bill.

Question put, *That* Clause 11, as amended, stand part of Bill.

Ayes, 10.	Noes, 10.
The Hon. Mr. Bonar.	The Hon. Mr. Barnicoat.
„ Sir P. A. Buckley, K.C.M.G.	„ Dr. Grace.
„ Mr. Dignan.	„ Mr. Hart.
„ Captain Morris.	„ Mr. C. J. Johnston.
„ Mr. Pharazyn.	„ Mr. Oliver.
„ Dr. Pollen.	„ Mr. Ormond.
„ Mr. Reynolds.	„ Mr. Scotland.
„ Mr. Taiaroa.	„ Mr. Shrimski.
„ Major Wahawaha.	„ Mr. Stevens.
„ Mr. Williams.	„ Mr. Swanson.

The numbers being equal, the Hon. the Chairman (The Hon. Captain Baillie) gave his casting vote with the Ayes.

DIVISION LIST, Wednesday, the 21st day of July 1892.

Subject: Oyster Fisheries Bill; Clause 7.

Question put, *That* consideration be postponed.

Ayes, 9.	Noes, 16.
The Hon. Dr. Grace.	The Hon. Mr. Barnicoat.
„ Mr. Hart.	„ Mr. Bonar.
„ Mr. Holmes.	„ Sir P. Buckley, K.C.M.G.
„ Mr. C. J. Johnston.	„ Mr. Dignan.
„ Mr. McLean.	„ Captain Morris.
„ Mr. Oliver.	„ Mr. Pharazyn.
„ Mr. Ormond.	„ Dr. Pollen.
„ Mr. Scotland.	„ Mr. Reynolds.
„ Mr. Taiaroa.	„ Mr. Shrimski..
	„ Mr. Stevens.
	„ Mr. Swanson.
	„ Mr. Walker.
	„ Major Wahawaha.
	„ Sir G. S. Whitmore, K.C.M.G.
	„ Mr. Whyte.
	„ Mr. Williams.

DIVISION LIST, Wednesday, the 21st day of July 1892.

Subject: Oyster Fisheries Bill.

Question put, To report progress and ask leave to sit again.

Ayes, 13.	Noes, 11.
The Hon. Dr Grace.	The Hon. Mr. Barnicoat.
„ Mr. Hart.	„ Mr. Bonar.
„ Mr. Holmes.	„ Sir P. A Buckley, K.C.M.G.
„ Mr. C. J. Johnston.	„ Mr. Dignan.
„ Mr. McLean.	„ Captain Morris.
„ Mr. Oliver.	„ Dr. Pollen.
„ Mr. Ormond.	„ Mr. Shrimski.
„ Mr. Pharazyn.	„ Mr. Swanson.
„ Mr. Reynolds.	„ Mr. Walker.
„ Mr. Scotland.	„ Major Wahawaha.
„ Mr. Stevens.	„ Mr. Williams.
„ Sir G. S. Whitmore, K.C.M.G.	
„ Mr. Whyte.	

DIVISION LIST, Wednesday, the 27th day of July 1892.

Subject: Land Transfer Act Amendment Bill.

Question put, Clause 13, *That* a certain word stand as printed.

Ayes, 7.	Noes, 10.
The Hon. Sir P. A. Buckley, K.C.M.G.	The Hon. Mr. Barnicoat.
„ Mr. Dignan.	„ Dr. Grace.
„ Mr. C. J. Johnston.	„ Mr. Holmes.
„ Mr. Swanson.	„ Mr. McLean.
„ Mr. Walker.	„ Mr. Oliver.
„ Major Wahawaha.	„ Mr. Pharazyn.
„ Sir G. S. Whitmore, K.C.M.G.	„ Mr. Scotland.
	„ Mr. Stevens.
	„ Mr. Stewart.
	„ Mr. Whyte.

DIVISION LIST, Thursday, the 28th day of July 1892.

Subject: Land Transfer Acts Amendment Bill.

Question put, *That* Clause 15 stand part of the Bill.

Ayes, 5.	Noes, 14.
The Hon. Sir P. A. Buckley, K.C.M.G.	The Hon. Mr. Barnicoat.
„ Mr. Dignan.	„ Dr. Grace.
„ Mr. Mantell.	„ Mr. Hart.
„ Mr. Swanson.	„ Mr. Holmes.
„ Mr. Taiaroa.	„ Mr. C. J. Johnston.
	„ Mr. McLean.
	„ Captain Morris.
	„ Mr. Oliver.
	„ Mr. Pharazyn.
	„ Mr. Reynolds.
	„ Mr. Stevens.
	„ Mr. Stewart.
	„ Mr. Walker.
	„ Mr. Whyte.

DIVISION LIST, Thursday, the 28th day of July 1892.

Subject: Wellington City Sanitation Loan Empowering Bill, Clause 3.

Question, *That* word "seventy," stand.

Ayes, 7.	Noes, 12.
The Hon. Sir P. A. Buckley, K.C.M.G.	The Hon. Mr. Barnicoat.
„ Mr. Dignan.	„ Dr. Grace.
„ Mr. C. J. Johnston.	„ Mr. Hart.
„ Mr. Pharazyn.	„ Mr. Mantell.
„ Mr. Swanson.	„ Mr. McBean.
„ Mr. Walker.	„ Captain Morris.
„ Sir G. S. Whitmore, K.C.M.G.	„ Mr. Oliver.
	„ Mr. Reynolds.
	„ Mr. Stevens.
	„ Mr. Stewart.
	„ Mr. Taiaroa.
	„ Mr. Whyte.

DIVISION LIST, Wednesday, the 24th day of August 1892.

Subject: Ocean Beach Public Domain Bill, Clause 23.

Question put, *That* the Clause be postponed.

Ayes, 8.	Noes, 14.
The Hon. Mr. Barnicoat.	The Hon. Mr. Hart.
„ Sir P. A. Buckley, K.C.M.G.	„ Mr. C. J. Johnston.
„ Mr. Dignan.	„ Mr. McLean.
„ Mr. Holmes.	„ Mr. Oliver.
„ Dr. Pollen.	„ Mr. Ormond.
„ Mr. Reynolds.	„ Mr. Pharazyn.
„ Mr. Stevens.	„ Mr. Scotland.
„ Mr. Swanson.	„ Mr. Stewart.
	„ Mr. Taiaroa.
	„ Mr. Walker.
	„ Major Wahawaha.
	„ Sir G. S. Whitmore, K.C.M.G.
	„ Mr. Whyte.
	„ Mr. Williams.

DIVISION LIST, Thursday, the 8th day of September 1892.

Subject: Petone Corporation Loan Empowering Bill, Clause 4.

Question put, *That* words proposed to be omitted stand part of Clause.

Ayes, 5.	Noes, 16.
The Hon. Mr. Dignan.	The Hon. Mr. Barnicoat.
„ Mr. Hart.	„ Sir P. A. Buckley, K.C.M.G.
„ Mr. C. J. Johnston.	„ Dr. Grace.
„ Mr. McLean.	„ Mr. Oliver.
„ Captain Morris.	„ Mr. Ormond.
	„ Mr. Pharazyn.
	„ Mr. Reynolds.
	„ Mr. Stevens.
	„ Mr. Stewart.
	„ Mr. Swanson.
	„ Mr. Taiaroa.
	„ Mr. Walker.
	„ Major Wahawaha.
	„ Sir G. S. Whitmore, K.C.M.G.
	„ Mr. Whyte.
	„ Mr. Williams.

DIVISION LIST, Wednesday, the 14th day of September 1892.

Subject: West Coast Settlement Reserves Bill, Clause 19.

Question put, *That* words be inserted.

Ayes, 14.	Noes, 8.
The Hon. Mr. Hart.	The Hon. Mr. Barnicoat.
„ Mr. Holmes.	„ Sir P. A. Buckley, K.C.M.G.
„ Mr. C. J. Johnston.	„ Mr. Dignan.
„ Mr. McLean.	„ Dr. Grace.
„ Mr. Oliver.	„ Captain Morris.
„ Mr. Ormond.	„ Mr Reynolds.
„ Mr. Pharazyn.	„ Mr. Walker.
„ Dr. Pollen.	„ Sir G. S. Whitmore, K.C.M.G.
„ Mr. Stevens.	
„ Mr. Stewart.	
„ Mr. Swanson.	
„ Mr. Taiaroa.	
„ Major Wahawaha.	
„ Mr. Whyte.	

DIVISION LIST, Wednesday, the 21st day of September 1892.

Subject: Electoral Bill.

Question put, *That* consideration of Clause 3 be postponed.

Ayes, 16.	Noes, 7.
The Hon. Mr. Barnicoat.	The Hon. Sir F. A. Buckley, K.C.M.G.
„ Dr. Grace.	„ Mr. Dignan.
„ Mr. Holmes.	„ Captain Morris.
„ Mr. C. J. Johnston.	„ Dr. Pollen.
„ Mr. Mantell.	„ Mr. Swanson.
„ Mr. McLean.	„ Mr. Walker.
„ Mr. Oliver.	„ Sir G. S. Whitmore, K.C.M.G.
„ Mr. Ormond.	
„ Mr. Pharazyn.	
„ Mr. Reynolds.	
„ Mr. Stevens.	
„ Mr. Stewart.	
„ Mr. Taiaroa.	
„ Major Wahawaha.	
„ Mr. Whyte.	
„ Mr. Williams.	

DIVISION LIST, Wednesday, the 21st day of September 1892.

Subject: Electoral Bill, Clause 8.

Question put, *That* words be inserted.

Ayes, 15.	Noes, 8.
The Hon. Dr. Grace.	The Hon. Mr. Barnicoat.
„ Mr. Holmes.	„ Sir P. A. Buckley, K.C.M.G.
„ Mr. C. J. Johnston.	„ Mr. Dignan.
„ Mr. Mantell.	„ Captain Morris.
„ Mr. McLean.	„ Dr. Pollen.
„ Mr. Oliver.	„ Mr. Walker.
„ Mr. Ormond.	„ Sir G. S. Whitmore, K.C.M.G.
„ Mr. Pharazyn.	„ Mr. Whyte
„ Mr. Reynolds.	
„ Mr. Stevens.	
„ Mr. Stewart.	
„ Mr. Swanson.	
„ Mr. Taiaroa.	
„ Major Wahawaha.	
„ Mr. Williams.	

DIVISION LIST, Wednesday, the 21st day of September 1892.

Subject: Electoral Bill, Clause 9.

Question put, *That* certain words be inserted.

Ayes, 16.	Noes, 7.
The Hon. Mr. Barnicoat.	The Hon. Sir P. A. Buckley, K.C.M.G.
„ Mr. Holmes.	„ Mr. Dignan.
„ Mr. McLean.	„ Dr. Grace.
„ Mr. Oliver.	„ Mr. C. J. Johnston.
„ Mr. Pharazyn.	„ Mr. Mantell.
„ Dr. Pollen.	„ Captain Morris.
„ Mr. Reynolds.	„ Mr. Ormond.
„ Mr. Stevens.	
„ Mr. Stewart.	
„ Mr. Swanson.	
„ Mr. Taiaroa.	
„ Mr. Walker.	
„ Major Wahawaha.	
„ Sir G. S. Whitmore, K.C.M.G.	
„ Mr. Whyte.	
„ Mr. Williams.	

DIVISION LIST, Wednesday, the 21st day of September 1892.

Subject: Electoral Bill, Clause 13.

Question put, *That* the words proposed to be omitted stand part of clause.

Ayes, 9.	Noes, 14.
The Hon. Mr. Barnicoat.	The Hon Dr. Grace.
„ Sir P. A. Buckley, K.C.M.G.	„ Mr. Holmes.
„ Mr. Dignan.	„ Mr. C. J. Johnston.
„ Captain Morris.	„ Mr. Mantell.
„ Mr. Stewart.	„ Mr. McLean.
„ Mr. Swanson.	„ Mr. Oliver.
„ Mr. Taiaroa.	„ Mr. Ormond.
„ Mr. Walker.	„ Mr. Pharazyn.
„ Major Wahawaha.	„ Dr. Pollen.
	„ Mr. Reynolds.
	„ Mr. Stevens.
	„ Sir G. S. Whitmore, K.C.M.G.
	„ Mr. Whyte.
	„ Mr. Williams.

DIVISION LIST, Thursday the 22nd day of September, 1892.

Subject: Electoral Bill, Clause 62.

Question, To extend Electoral Right to Harvesters.

Ayes, 16.	Noes 7.
The Hon. Mr. Barnicoat.	The Hon. Sir P. A. Buckley, K.C.M.G.
„ Mr. Holmes.	„ Mr. Dignan.
„ Mr. C. J. Johnston.	„ Dr. Grace.
„ Mr. McLean.	„ Mr. Mantell.
„ Mr. Oliver.	„ Capt. Morris.
„ Mr. Ormond.	„ Mr. Stewart.
„ Mr. Pharazyn.	„ Mr. Taiaroa.
„ Dr. Pollen.	
„ Mr. Reynolds.	
„ Mr. Stevens.	
„ Mr. Swanson.	
„ Mr. Walker.	
„ Major Wahawaha.	
„ Sir G. S. Whitmore, K.C.M.G.	
„ Mr. Whyte.	
„ Mr. Williams.	

DIVISION LIST, Thursday, the 22nd day of September 1892.

Subject: Electoral Bill, Clause 66.

Question put, *That* Words be inserted.

Ayes, 16.	Noes, 6.
The Hon. Mr. Barnicoat.	The Hon. Sir P. A. Buckley, K.C.M.G.
„ Dr. Grace.	„ Mr. Dignan.
„ Mr. Holmes,	„ Dr. Pollen.
„ Mr. C. J. Johnston.	„ Mr. Swanson.
„ Mr. McLean.	„ Mr. Taiaroa.
„ Capt. Morris.	„ Mr. Walker.
„ Mr. Oliver.	
„ Mr. Ormond.	
„ Mr. Pharazyn.	
„ Mr. Reynolds.	
„ Mr. Stevens.	
„ Mr. Stewart.	
„ Major Wahawaha.	
„ Sir G. S. Whitmore, K.C.M.G.	
„ Mr. Whyte.	
„ Mr. Williams.	

DIVISION LIST, Thursday, the 22nd day of September 1892.

Subject: Electoral Bill, Clause 102.

Question put, *That* Words proposed to be omitted stand part of Clause.

Ayes, 7.	Noes, 11.
The Hon. Mr. Barnicoat.	The Hon. Mr. Holmes.
„ Sir P. A. Buckley, K.C.M.G.	„ Mr. McLean.
„ Mr. Dignan.	„ Mr. Oliver.
„ Dr. Grace.	„ Mr. Ormond.
„ Mr. C. J. Johnston.	„ Mr. Pharazyn.
„ Mr. Walker.	„ Dr. Pollen.
„ Sir G. S. Whitmore, K.C.M.G.	„ Mr. Reynolds.
	„ Mr. Stevens.
	„ Mr. Swanson.
	„ Major Wahawaha.
	„ Mr. Williams.

DIVISION LIST, Thursday, 22nd day of September 1892.

Subject: Electoral Bill, Clause 7.

Question put, To report progress and ask leave to sit again.

Ayes. 6.	Noes. 14.
The Hon. Sir P. A. Buckley, K.C.M.G.	The Hon. Mr. Barnicoat.
„ Mr. Swanson.	„ Mr. Dignan.
„ Mr. Walker.	„ Dr. Grace.
„ Major Wahawaha.	„ Mr. Holmes.
„ Sir G. S. Whitmore, K.C.M.G.	„ Mr. C. J. Johnston.
„ Mr. Williams.	„ Mr. McLean.
	„ Mr. Oliver.
	„ Mr. Ormond.
	„ Mr. Pharazyn.
	„ Dr. Pollen.
	„ Mr. Reynolds.
	„ Mr. Stevens.
	„ Mr. Stewart.
	„ Mr. Taiaroa.

DIVISION LIST, Friday, the 23rd day of September 1892.

Subject: Electoral Bill.

Question put, *That* New Clause be added—Electoral Right for Women.

Ayes, 13.	Noes, 8.
The Hon. Dr. Grace.	The Hon. Sir P. A. Buckley, K.C.M.G.
„ Mr. Holmes.	„ Mr. Dignan.
„ Mr. C. J. Johnston.	„ Mr. Mantell.
„ Mr. Oliver.	„ Capt. Morris.
„ Mr. Ormond.	„ Mr. Swanson.
„ Mr. Pharazyn.	„ Mr. Taiaroa.
„ Dr. Pollen.	„ Mr. Walker.
„ Mr. Reynolds.	„ Sir G. S. Whitmore, K.C.M.G.
„ Mr. Stevens.	
„ Mr. Stewart.	
„ Major Wahawaha.	
„ Mr. Whyte.	
„ Mr. Williams.	

DIVISION LIST, Friday, the 23rd day of September 1892.

Subject: Electoral Bill.

Question put, *That* New Clause be added—Dividing City Electoral Districts.

Ayes, 12.	Noes, 7.
The Hon. Mr. Holmes.	The Hon. Mr. Barnicoat.
„ Mr. Mantell.	„ Sir P. A. Buckley, K.C.M.G.
„ Mr. Oliver.	„ Mr. Dignan.
„ Mr. Ormond.	„ Dr. Grace.
„ Mr. Pharazyn.	„ Mr. C. J. Johnston.
„ Dr. Pollen.	„ Mr. Walker.
„ Mr. Reynolds.	„ Sir G. S. Whitmore, K.C.M.G.
„ Mr. Stevens.	
„ Mr. Stewart.	
„ Mr. Swanson.	
„ Major Wahawaha.	
„ Mr. Williams.	

DIVISION LIST, Friday, the 23rd day of September 1892.

Subject: Electoral Bill, Clause 3.

Question, To put "Person does not include woman," for "Person includes woman."

Ayes, 6.	Noes, 13.
The Hon. Mr. Mantell.	The Hon. P. A. Buckley, K.C.M.G.
„ Capt. Morris.	„ Mr. Dignan.
„ Dr. Pollen.	„ Mr. Holmes.
„ Mr. Swanson.	„ Mr. C. J. Johnston.
„ Mr. Walker.	„ Mr. Oliver.
„ Sir G. S. Whitmore, K.C.M.G.	„ Mr. Ormond.
	„ Mr. Pharazyn.
	„ Mr. Reynolds.
	„ Mr. Stevens.
	„ Mr. Stewart.
	„ Mr. Taiaroa.
	„ Major Wahawaha.
	„ Mr. Whyte.

DIVISION LIST, Tuesday, the 27th day of September 1892.

Subject: Land Bill, Clause 17.

Question put, *That* Words be inserted.

Ayes, 10.	Noes, 6.
The Hon. Mr. Barnicoat.	The Hon. Sir P. A. Buckley, K.C.M.G.
„ Mr. C. J. Johnston.	„ Mr. Dignan.
„ Mr. Oliver.	„ Capt. Morris.
„ Mr. Ormond.	„ Dr. Pollen.
„ Mr. Pharazyn.	„ Mr. Swanson.
„ Mr. Reynolds.	„ Sir G. S. Whitmore, K.C.M.G.
„ Mr. Stevens.	
„ Mr. Stewart.	
„ Major Wahawaha.	
„ Mr. Williams.	

DIVISION LIST, Tuesday, the 27th day of September 1892.

Subject:—Land Bill, Clause 76.

Question put, *That* words stand part of clause.

Ayes, 3.	Noes, 10.
The Hon. Sir P. A. Buckley, K.C.M.G.	The Hon. Mr. Barnicoat.
„ Mr. Dignan.	„ Mr. C. J. Johnston.
„ Dr. Pollen.	„ Captain Morris.
	„ Mr. Oliver.
	„ Mr. Pharazyn.
	„ Mr. Reynolds.
	„ Mr. Stevens.
	„ Mr. Stewart.
	„ Mr. Swanson.
	„ Mr. Williams.

DIVISION LIST, Tuesday, the 27th day of September 1892,

Subject:—Land Bill.

Question put, *That* Clause 87 stand part of Bill.

Ayes, 6.	Noes, 8.
The Hon. Mr. Barnicoat.	The Hon. Mr. Dignan.
„ Sir P. A. Buckley, K.C.M.G.	„ Mr. C. J. Johnston.
„ Captain Morris.	„ Mr. Oliver.
„ Mr. Reynolds.	„ Mr. Ormond.
„ Mr. Stewart.	„ Mr. Pharazyn.
„ Sir G. S. Whitmore, K.C.M.G.	„ Mr. Stevens.
	„ Mr. Swanson.
	„ Mr. Williams.

DIVISION LIST, Tuesday, the 27th day of September 1892.

Subject:—Land Bill, Clause 89.

Question put, *That* words stand part of clause.

Ayes, 9.	Noes, 6.
The Hon. Sir P. A. Buckley, K.C.M.G.	The Hon. Mr. Barnicoat.
„ Mr. Dignan.	„ Mr. Oliver.
„ Mr. C. J. Johnston.	„ Mr. Pharazyn.
„ Captain Morris.	„ Mr. Stevens.
„ Mr. Ormond.	„ Mr. Swanson.
„ Dr. Pollen.	„ Mr. Williams.
„ Mr. Reynolds.	
„ Mr. Stewart.	
„ Sir G. S. Whitmore, K.C.M.G.	

DIVISION LIST, Tuesday, the 27th day of September 1892.

Subject:—Land Bill, Clause 89.

Question put, *That* words be inserted.

Ayes, 7.	Noes, 6.
The Hon. Mr. Barnicoat.	The Hon. Sir P. A. Buckley, K.C.M.G.
„ Mr. Dignan.	„ Mr. Pharazyn.
„ Mr. C. J. Johnston.	„ Mr. Reynolds.
„ Mr. Oliver.	„ Mr. Stewart.
„ Mr. Ormond.	„ Sir G. S. Whitmore, K.C.M.G.
„ Mr. Stevens.	„ Mr. Williams.
„ Mr. Swanson.	

DIVISION LIST, Tuesday, the 27th day of September 1892.

Subject:—Land Bill, Clause 134.

Question put, *That* words stand part of Clause.

Ayes, 2.	Noes, 11.
The Hon. Sir P. A. Buckley, K.C.M.G.	The Hon. Mr. Barnicoat.
Mr. Dignan.	„ Mr. C. J. Johnston.
	„ Mr. Oliver.
	„ Mr. Ormond.
	„ Mr. Pharazyn.
	„ Mr. Reynolds.
	„ Mr. Stevens.
	„ Mr. Stewart.
	„ Mr. Swanson.
	„ Sir G. S. Whitmore, K.C.M.G.
	„ Mr. Williams.

DIVISION LIST, Tuesday, the 27th day of September 1892.

Subject:—Land Bill, Clause 157.

Question put,—That words be inserted.

Ayes, 10.	Noes, 4.
The Hon. Mr. Barnicoat.	The Hon. Sir P. A. Buckley, K.C.M.G.
„ Mr. C. J. Johnston.	„ Mr. Dignan.
„ Mr. Oliver.	„ Captain Morris.
„ Mr. Ormond.	„ Sir G. S. Whitmore, K.C.M.G.
„ Mr. Pharazyn.	
„ Mr. Reynolds.	
„ Mr. Stevens.	
„ Mr. Stewart.	
„ Mr. Swanson.	
„ Mr. Williams.	

DIVISION LIST, Wednesday, the 28th day of September 1892.

Subject: Mining Companies Act Amendment Bill.

Question put, *That* Clause 5 stand part of Bill.

Ayes 14.	Noes, 5.
The Hon. Mr. Barnicoat.	The Hon. Mr. C. J. Johnston.
„ Sir P. A. Buckley, K.C.M.G.	„ Captain Morris.
„ Mr. Hart.	„ Mr. Walker.
„ Mr. Holmes.	„ Sir G. S. Whitmore, K.C.M.G.
„ Mr. Ormond.	„ Mr. Whyte.
„ Mr. Pharazyn.	
„ Dr. Pollen.	
„ Mr. Reynolds.	
„ Mr. Stevens.	
„ Mr. Stewart.	
„ Mr. Swanson.	
„ Mr. Taiaroa.	
„ Major Wahawaha.	
„ Mr. Williams.	

DIVISION LIST, Wednesday, the 28th day of September 1892.

Subject: Land Bill.

Question put, *That* Proviso be added to Clause 187.

Ayes, 12.	Noes, 1.
The Hon. Mr. Barnicoat.	The Hon. Sir P. A. Buckley, K.C.M.G.
„ Mr. C. J. Johnston.	
„ Mr. Oliver.	
„ Mr. Ormond.	
„ Mr. Pharazyn.	
„ Dr. Pollen.	
„ Mr. Stevens.	
„ Mr. Stewart.	
„ Mr. Swanson.	
„ Major Wahawaha.	
„ Sir G. S. Whitmore, K.C.M.G.	
„ Mr. Whyte.	

DIVISION LIST, Friday, the 30th day of September 1892.

Subject: Shops and Shop Assistants Bill, Clause 2.

Question put, *That* definition of "closed" stand.

Ayes, 4.	Noes, 16.
The Hon. Mr. Barnicoat.	The Hon. Mr. Dignan.
„ Sir P. A. Buckley, K.C.M.G.	„ Dr. Grace.
„ Mr. McLean.	„ Mr. Hart.
„ Mr. Stewart.	„ Mr. Holmes.
	„ Mr. C. J. Johnston.
	„ Mr. Oliver.
	„ Mr. Pharazyn.
	„ Dr. Pollen.
	„ Mr. Reynolds.
	„ Mr. Stevens.
	„ Mr. Swanson.
	„ Mr. Walker.
	„ Major Wahawaha.
	„ Sir G. S. Whitmore, K.C.M.G.
	„ Mr. Whyte.
	„ Mr. Williams.

DIVISION LIST, Friday, the 30th day of September 1892.

Subject: Shops and Shop Assistants Bill, Clause 3.

Question put, *That* clause stand part of Bill.

Ayes, 3.	Noes, 16.
The Hon. Mr. Barnicoat.	The Hon. Mr. Dignan.
„ Sir P. A. Buckley, K.C.M.G.	„ Mr. Hart.
„ Mr. Stewart.	„ Mr. Holmes.
	„ Mr. C. J. Johnston.
	„ Mr. McLean.
	„ Mr. Oliver.
	„ Mr. Pharazyn.
	„ Dr. Pollen.
	„ Mr. Reynolds.
	„ Mr. Stevens.
	„ Mr. Swanson.
	„ Mr. Walker.
	„ Major Wahawaha.
	„ Sir G. S. Whitmore, K.C.M.G.
	„ Mr. Whyte.
	„ Mr. Williams.

DIVISION LIST, Friday, the 30th day of September 1892.

Subject: Factories Act Amendment Bill.

Question put, *That* Clause 8 stand part of Bill.

Ayes, 6	Noes, 14.
The Hon. Sir P. A. Buckley, K.C.M.G.	The Hon. Mr. Barnicoat.
„ Mr. Dignan.	„ Mr. Hart.
„ Mr. Stewart.	„ Mr. Holmes.
„ Mr. Walker.	„ Mr. C. J. Johnston.
„ Major Wahawaha.	„ Mr. McLean.
„ Sir G. S. Whitmore, K.C.M.G.	„ Mr. Oliver.
	„ Mr. Pharazyn.
	„ Dr. Pollen.
	„ Mr. Reynolds.
	„ Mr. Stevens.
	„ Mr. Swanson.
	„ Mr. Taiaroa.
	„ Mr. Whyte.
	„ Mr. Williams.

DIVISION LIST, Monday, the 3rd day of October 1892.

Subject: Industrial Conciliation Bill, Clause 42.

Question put, *That* Sub-section (2) stand part of clause.

Ayes, 6.	Noes, 13.
The Hon. Mr. Barnicoat.	The Hon. Dr. Grace.
„ Sir P. A. Buckley, K.C.M.G.	„ Mr. Hart.
„ Mr. Dignan.	„ Mr. C. J. Johnston.
„ Mr. McLean.	„ Mr. Oliver.
„ Mr. Walker.	„ Mr. Pharazyn.
„ Major Wahawaha.	„ Dr. Pollen.
	„ Mr. Reynolds.
	„ Mr. Stevens.
	„ Mr. Stewart.
	„ Mr. Swanson.
	„ Mr. Taiaroa.
	„ Sir G. S. Whitmore, K.C.M.G.
	„ Mr. Whyte.

DIVISION LIST, Monday, the 3rd day of October 1892.

Subject: Industrial Conciliation Bill.

Question put, *That* Clause 44 stand part of Bill.

Ayes, 7.	Noes, 10.
The Hon. Mr. Barnicoat.	The Hon. Mr. Hart.
„ Sir P. A. Buckley, K.C.M.G.	„ Mr. C. J. Johnston.
„ Mr. Dignan.	„ Mr. Oliver.
„ Mr. McLean.	„ Mr. Pharazyn.
„ Mr. Walker.	„ Mr. Reynolds.
„ Major Wahawaha.	„ Mr. Stevens.
„ Sir G. S. Whitmore, K.C.M.G.	„ Mr. Stewart.
	„ Mr. Swanson.
	„ Mr. Taiaroa.
	„ Mr. Whyte.

DIVISION LIST, Monday, the 3rd day of October 1892.

Subject: Industrial Conciliation Bill.

Question put, *That* Clause 65 stand part of Bill.

Ayes, 3.	Noes, 12.
The Hon. Sir P. A. Buckley, K.C.M.G.	The Hon. Mr. Barnicoat.
„ Mr. Dignan.	„ Mr. Hart.
„ Major Wahawaha.	„ Mr. C. J. Johnston.
	„ Mr. McLean.
	„ Mr. Oliver.
	„ Mr. Pharazyn.
	„ Mr. Reynolds.
	„ Mr. Stevens.
	„ Mr. Stewart.
	„ Mr. Swanson.
	„ Mr. Taiaroa.
	„ Sir G. S. Whitmore, K.C.M.G.

Enclosure 3 in No. 16.

MEMBERS absent from the Legislative Council, Session 1892.

With his Excellency the Governor's leave { Hon. Mr. Bowers. / Hon. Mr. Peacock. } 2

Absent in England without leave, which is not necessary when a Member is only absent one Session { Hon. Mr. Ackland. / Hon. Mr. Wilson. } 2

Absent for the greater part of the Session:—

From illness	30 June	-	Hon. Mr. Shepherd.
From sickness	26 July	-	Hon. Mr. Shrimski.
From sickness	21 July	-	Hon. Capt. Kenny.
Granted absence for three weeks, but did not return	21 July	- - -	Hon. Mr. Bonar.

4

Present total of Roll, 35.

Enclosure 4 in No. 16.

Concerning Division Lists in the Legislative Council or in General Committee thereof; also particulars concerning the said Council.

During the Session of 1892 the Legislative Council's strength was thirty-five (35), but from absence and indisposition only twenty-seven (27) were present.

Forty (40) Government measures were introduced in the Legislative Council; of these thirty seven (37) were passed, one (1) was dropped, and only two (2) were rejected, and these only after conference with the other House.

The Governor is empowered under the Constitution of the Colony to call to the Legislative Council such persons as he shall think fit, and no limitation has been made to the number, although on one occasion a Committee of the Council reported in favour of limiting the Council to one-half the strength of the House of Representatives. That was in 1887 when, in deference to public opinion, the strength of the House of Representatives was reduced from ninety-five (95) to seventy-four (74) members. At that time the strength of the Legislative Council was forty-nine (49), or a fraction more than half of the other House. From that date till 1891 no appointments were made, and the strength of the Council fell to thirty-nine (39), or a fraction over half the other House. After reduction in 1891 the late Governor (Lord Onslow) granted Sir Harry Atkinson seven (7) appointments; the number now granted makes the strength of the Council forty-seven (47), or only two (2) less than when the other House numbered ninety-five (95), as against seventy-four (74) now.

General view of results of Divisions as shown on ensuing pages:—

There was a Government majority in - - - -	10 divisions.
There would have been a Government majority had twelve (12) Councillors been appointed, in other -	31 divisions.
So that the twelve (12) appointments would have given the Government a majority in - - - -	41 divisions.
Out of a total of - - - - - - - -	42 „
Leaving the Opposition with a majority in - - -	1 division.

Whereas the unbiassed opinion of the Council as it existed before reinforcement gave the Government a majority in only ten (10) divisions, although all the Government measures were carried except three.

LIST of DIVISIONS in the Legislative Council and in the Committee of the whole Council, during the Session of 1892, in which the Government possessed a majority.

Date of Division.	Votes for Government.	Votes for Opposition.	Majority for Government.	REMARKS.—Showing the number who Voted out of twenty-seven (27.)
13 September -	15	8	7	23 voted.
23 „ -	12	5	7	17 „
27 „ -	9	6	3	15 „
27 „ -	7	6	1	13 „
28 „ -	13	6	7	19 „
28 „ -	14	5	9	19 „
6 October - -	17	2	15	19 „
8 „ - -	12	7	5	19 „
10 „ - -	12	7	5	19 „
10 „ - -	16	2	14	18 „
10 Divisons.	—	—	—	—

The following is the only DIVISION which took place during the Session when the Opposition would have retained a majority, had the twelve (12) appointments been made.

Date of Division.	Votes for Government.	Votes for Opposition.	Majority for Opposition.	REMARKS.
30 October - -	3	16	13	19 voted out of 27.

LIST of DIVISIONS in the Legislative Council and in Committee thereof, during the Session of 1892, in which an addition of twelve (12) appointments to the Council would have put the Government in the majority, instead of the minority.

Date of Division.	Votes for Government.	Votes for Opposition.	Majority for Government.	REMARKS.—Showing the number that Voted out of 27.
15 July - -	10	11	11	21 voted.
15 „ - -	10	12	10	22 „
21 „ - -	9	16	5	25 „
21 „ - -	11	13	10	24 „
27 „ - -	7	10	9	17 „
28 „ - -	5	14	3	19 „
2 August - -	5	12	5	17 „
23 „ - -	4	16	—	20 „
13 September -	4	16	—	20 „
14 „ -	8	14	6	22 „
21 „ -	7	16	3	23 „
21 „ -	8	15	5	23 „
21 „ -	7	16	3	23 „
21 „ -	9	14	7	23 „
22 „ -	6	16	2	22 „
22 „ -	7	16	3	23 „
22 „ -	7	11	8	18 „
22 „ -	6	14	4	20 „
28 „ -	8	13	7	21 „
28 „ -	7	12	7	19 „
27 „ -	6	10	8	16 „
27 „ -	3	10	5	13 „
27 „ -	6	8	10	14 „
27 „ -	2	11	3	13 „
27 „ -	4	10	6	14 „
28 „ -	1	12	1	13 „
30 „ -	6	14	4	20 „
30 „ -	4	16	—	20 „
3 October -	6	16	5	19 „
3 „ -	7	10	9	17 „
3 „ -	3	12	3	15 „
31 Divisions.	—	—	—	—

N.B.—In three cases, where an addition of twelve (12) Councillors would have given an equality of votes for either side, it has been assumed that the Chairman of Committees would have given his casting vote in favour of the Government.

— No. 17. —

The Marquess of *Ripon* to the Earl of *Glasgow*.

My Lord, Downing-street, 17th February, 1893.

I HAVE the honour to acknowledge the receipt of your despatch of the 3rd December,* with its enclosures, respecting the recent appointments to the Legislative Council of New Zealand.

* No. 16.

Your Lordship questions in that despatch the propriety of an appeal from the Government of a Colony possessing Responsible Government to the Colonial Office upon such a matter.

I would observe, in the first place, that such an objection to a reference to this department should, if taken at all, be taken at the time of the reference, and comes too late if not made till after my opinion has been asked. Your Ministers submitted to your Lordship a memorandum in which they invited my attention to the difference which had arisen, and this memorandum, with others that passed subsequently, you rightly transmitted to me. In doing so you commented upon the statements of your Ministers, and after expressing your own opinions

you concluded by leaving the matter in my hands. I do not find that you raised any objection, either in your correspondence with your Ministers or in your despatches to me, to their action in referring the question to me; on the contrary, you were, as I understood, and as you recognise in your despatch under reply, yourself a party to the reference.

Neither I nor my predecessor, during whose tenure of office this reference was actually made, in any way sought it. It came to me as a joint reference from yourself and your Government.

I do not feel myself called upon to express any opinion upon the advisability of the course taken by your Ministers in seeking my advice on such a question; but I am of opinion that I should not be justified in refusing an expression of my views when it is asked for by the Governor of the Colony or by his constitutional advisers.

You proceed to express the opinion that, when Ministers are unable to come to an agreement with the Governor, they should, if they consider the case sufficiently important, tender their resignation. This is, no doubt, the step which in the last resort a Colonial Ministry must take in the case of any acute difference between the Governor and themselves, in order that it may be made apparent whether they are supported by the Colony. But it is for the Colonial Ministry to judge whether this step should be taken. On the occasion now under discussion they thought proper to adopt another course, and, with your concurrence, to refer the matter at issue to my predecessor.

With regard to the Returns which you enclose in the despatch under acknowledgment, I would observe that I had to arrive at my conclusions on the materials then in my possession. In one of the memoranda from your Government it was stated that some of the vital points of policy in their measures were defeated by large majorities in the Legislative Council, and that an inspection of the division lists of the preceding Session showed that the Government could, as a rule, only rely on the support of five members. The Returns now sent do not show to what extent the divisions referred to therein proceeded upon party lines, and I do not feel able to draw the inference from them that your Ministry would, with the help of the twelve appointments, have necessarily commanded a majority for party purposes in the Legislative Council. Indeed, it appears that in Committee on the Land Bill, the Bill to which Mr. Ballance especially referred as rendering it necessary to strengthen his position in the Legislative Council, the Government were only able to muster at the most six supporters, and at times only two, three, and four.

As the matter has now been disposed of by the appointment of the additional members reported in your despatch of 2nd December,* I have only to add that I have received with great satisfaction the assurance that you do not feel that your personal position has been in any way detrimentally affected by the fact that my decision has been against your view, and I fully recognise the difficulties which you felt in regard to the question, and your desire to represent the whole matter to me in the fullest light.

* No. 15.

I have, &c.,
(signed) *Ripon.*

Governor,
The Earl of Glasgow, G.C.M.G.

— No. 18 —

The Marquess of *Ripon* to the Earl of *Glasgow.*

My Lord, Downing-street, 17th February, 1893.

I HAVE the honour to acknowledge the receipt of your despatch of the 2nd of December,* reporting that in accordance with the advice of your Ministers you had made twelve appointments to the Legislative Council of New Zealand, as set out in the extract from the Supplement of the "Colonial Gazette" which you enclosed.

No. 15.

I have, &c.,
(signed) *Ripon.*

Governor,
The Earl of Glasgow, G.C.M.G.

APPENDIX I.

COPIES of Parliamentary Papers published in *New South Wales* and enclosed in the Earl of *Glasgow's* Despatch of 8th August 1892.—(No. 9 in Series.)

LEGISLATIVE ASSEMBLY.—NEW SOUTH WALES.

APPOINTMENTS to the Legislative Council. (Despatches and Correspondence, &c., Respecting,—From 1861 to present date.)

Ordered by the Legislative Assembly to be printed, 13 *August*, 1872.

RETURN (in part) to an *Address* from the Honourable the Legislative Assembly of New South Wales, dated 6 August 1872, praying that His Excellency the Governor would be pleased to cause to be laid upon the Table of this House,—

"COPIES of all Despatches (not confidential) from the Right Honourable the "Secretary of State to the Governor of this Colony, and of all Despatches "(not confidential) from the Governor to the Secretary of State; and also "copies of all Minutes, Letters, or other written Documents by the Responsible "Advisers of the Crown, having reference to Appointments to the Legislative "Council, from the year 1861 to the present date, inclusive."

(*Mr. Robertson.*)

THE following Papers are transmitted to the Colonial Secretary, in compliance with the request contained in the Address from the Legislative Assembly, relative to Appointments to the Legislative Council:—

Duke of Newcastle	Separate	4 February, 1861.
Sir John Young	No. 37	21 May, 1861.
Sir John Young	No. 51	19 July, 1861.
Sir John Young	No. 53	20 July, 1861.
Duke of Newcastle	Separate	26 July, 1861.
Duke of Newcastle	No. 67	21 October, 1861.
Duke of Newcastle	No. 68	21 October, 1861.
Sir John Young	No. 14	16 February, 1865.
Mr. Cardwell	No. 37	26 May, 1865.
Lord Belmore (2 Enclosures)	No. 109	29 September, 1868.
Lord Granville	No. 2	18 December, 1868.
Lord Belmore (1 Enclosure)	No. 109	14 July, 1869.
Lord Granville	No. 77	2 October, 1869.

There are further Despatches on this subject; but they are marked confidential, and so cannot be given.

G. H. de Robeck.

APPOINTMENTS to the Legislative Council.

The Secretary of State for the Colonies to Governor Sir *John Young.*

(Separate.)

SIR, Downing-street, 4 February, 1861.

I HAVE been reminded by your predecessor's Despatch No. 113, of the 19th November last, that the period is approaching when the present Members of the Legislative Council will vacate their seats, and a new appointment of Councillors will become necessary.

The Members of the first Council were appointed under the Constitutional Act, in May, 1856, and were to retain their seats for five years. In May, 1861, therefore, it will become the duty of the Governor, with the advice of his Executive Council, to appoint not less than twenty-one (21) Legislative Councillors, who are to hold their seats for life.

I am very deeply impressed by the importance of this conjuncture to the well-being of the colony; not because I at all anticipate that the opportunity will be taken to place unfit persons in that branch of the Legislature, but because the occasion appears to me one which is calculated to try very severely the system of party government now established more or less in the principal British colonies.

A Government representing not the entire community, but that political party which is in the ascendant, is in an evidently false position when called upon to reconstruct a branch

of the Legislature. If they adopt the task, it cannot be expected that they will place their own party in a minority in the Council. But it is equally clear that if they give themselves a majority in that body, it will be liable to be viewed as the mere creature of the party which appointed it, and that their opponents will probably conceive themselves justified, on succeeding to office, in adjusting the inequality by the creation of fresh Councillors. On every change of Ministry the same argument will be equally good, and the consequence may be that the first act of each administration may be to swamp the Council which has been previously swamped by their predecessors.

Such a result would of course amount to a total change of the present Constitution. But far worse than any change of the Constitution would be the demoralising effect of the mode in which that change had been effected. No Government can subsist unless the Legislature is an object of respect. No party Government can long subsist with advantage to the community, unless rival political parties are tacitly agreed that great constitutional cases shall be treated with reference to the public good, and not to party interests.

Now, in the circumstances I have supposed, a branch of the Legislature, without ceasing to exist, could not fail to sink into a state of weakness and disrepute. And this misfortune would have arisen from the fact that a number of gentlemen finding themselves in power at the period of a great constitutional change had treated, or at least had allowed it to be supposed that they had treated, that occasion as a mere means of party advantage, and that their opponents on coming into power had endorsed their proceedings, by following (as far as possible) their example.

Not knowing who may be your advisers when this despatch reaches the colony, I may be allowed, without any disrespect to them, to say, that these considerations appear to me conclusive as to the dangers inherent in the mere nomination of a fresh Legislative Council in the terms of the Colonial Act of Parliament by the Governor and Executive Council.

But it is possible that some of those who are dissatisfied with the existing Constitution may be desirous of using this opportunity to bring the Legislature into a position of such embarrassment as shall force an alteration of its composition.

Such a course seems to me hardly less detrimental to the permanent interest of the colony than the nomination of a partisan council. I do not inquire how far the Constitution is suited to the exigencies of New South Wales—this is a question for those who inhabit that colony; but of this I am, certain, that in a free country little permanency can be expected for any reform unless it has been carried either without material opposition, or under such circumstances as compel even the minority to acknowledge that they have been fairly heard and decisively vanquished.

This is a consideration of the greatest weight in a new country where the Constitution has not had time to acquire that authority which is earned by long and successful use. There, most of all, is it desirable that fundamental changes should be so carried as to be secure from reversal. But such reversal is almost invited when an important change in the Constitution of the Legislature is carried, not after argument and experience by the deliberate judgment of the community, but by the hasty and adroit use of an exceptional necessity.

It is scarcely requisite to point out an obvious mode of avoiding these difficulties by the bare re-appointment of the present Legislative Councillors. I do not know how far these gentlemen at present command the confidence of the colonists; and it can hardly be supposed that if the appointments were to be made in 1861, all the same persons would be placed in the Council who were nominated to it in 1856. But without anticipating the judgment of the colonists on the public conduct of these gentlemen, I may be allowed to say that, if there should be no paramount objection to their reappointment, I see in that course a promise of permanent advantage, or rather an escape from a very serious danger, and that I should learn with great satisfaction that your Government had decided upon adopting it.

It is most probable that the considerations which have pressed so strongly on my own mind may have presented themselves with still greater force to your advisers long before you receive this despatch; and it is possible that public opinion (which must also have been directed to the subject) may have already decided upon some sufficient mode of obviating the inconveniences of which I am apprehensive.

If this be the case, the present despatch is happily unnecessary.

But it is also possible that the question may be still involved in embarrassment, and that the political parties who are concerned in bringing it to a constitutional settlement may be aided in their object by the suggestions of one not unacquainted with the exigencies of Constitutional Government, and who cannot be suspected of any other motive than an earnest desire for the welfare of New South Wales.

It is under this impression that I have addressed you. If this very important question is likely to settle itself in a manner conducive to the welfare of the Colony, there is no reason why you should give any publicity to this despatch; but you are at liberty to make use of it in such a way as you may find expedient, if you think that its communication to your Government, or to the colonists generally, will be advantageous to the public interest.

I have, &c.
Newcastle.

Governor Sir *John Young* to the Secretary of State for the Colonies.

(No. 37.)

My Lord Duke, Government House, 21 May 1861.

I HAVE the honour to enclose a copy of the Proclamation proroguing the Parliament of this Colony on the 11th instant.

It was necessary to close the Session, in consequence of the expiration of the period to which the first nominations to the Legislative Council were limited.

Several useful enactments were made, the Estimates thoroughly discussed, and the Appropriation Act passed in due form, so that the current expenditure up to 31st December next will proceed under full legislative sanction, which has not been the case for two or three years past.

The Land Bills, I am sorry to say, were not passed, and this difficult and embarrassing question still remains open. At one time there was every prospect of an agreement on all points between the two Houses, and the leading and most moderate men in both gave me the most satisfactory assurances. But unfortunately, during the last week of the Session, a different spirit came over the proceedings. The Legislative Assembly rejected, by large majorities, the amendments of the Legislative Council, which the Legislative Council again insisted, by large majorities, on maintaining.

The Ministers said they had submitted to "indignities" in attempting to pass these Bills, and that their honour was so nearly concerned that additional nominations to the Legislative Council must be made, so as to ensure the passing of the Bills.

The choice, if choice it can be called, placed before me on the morning of Friday, the 10th instant, was, either to accept the advice of the Ministers, or to break with them, backed as they are by six-sevenths of the Legislative Assembly, and by the people, in a cry which was all-powerful on the hustings, at the General Election, no later than last December.

It was admitted on all hands to be impossible to form any other Ministry. The Legislative Council was to expire, in terms of the Constitution, on the following Monday.

No precedent could be founded on the proceedings, as similar circumstances can never recur in the history of the Colony, and it seemed desirable to make an effort to end the long, harassing, and injurious agitation on the Land question before the question of the new nominations to the Legislative Council came upon the carpet.

Accordingly, after some hesitation, and after receiving the assurance that the step taken should not prejudice the reconstruction of the Legislative Council, that all the gentlemen to be specially appointed for the single night the Council had to last should be made clearly to understand that they would have no claim or right thereby to future re-appointment, I consented to the course pressed on me by the Ministers.

The nominations were made accordingly, but the opposite party defeated the ministerial intentions by resigning. The President's resignation in particular had the effect of preventing a House being formed. There was "No House," so the new Members were not sworn in, and the adjournment which ensued, as a matter of course, was nominally to the following Tuesday, but it really closed the Session, for it went over to a period when, by the effluxion of time, the Legislative Council—the old as well as the new nominations—had ceased to have effect.

Matters now stand thus:—The Parliament is prorogued. Whether it will be called together to pass the Land Bill one month or three months hence is not yet decided.

The expenditure and current business are proceeding in due form, and with all requisite sanctions.

The Land question remains unsettled, which is to be deplored, as the state of conflict and uncertainty is deeply hurtful in many ways, but the public mind is quiet.

The people are satisfied that all that could be done to pass the Bills on which their hearts are set has been done by Ministers.

No meetings have been called. The tone of the Press is moderate, and measures for the reconstruction of the Legislative Council have been taken on a basis which accords with your Grace's recommendations.

These measures are not sufficiently advanced for me to make a positive statement as to the result at the present moment, but I think I may say there appears to me to be ground for hoping that I shall be enabled to make your Grace a satisfactory announcement on this anxious subject by the next mail.

I have, &c,
John Young.

Governor Sir *John Young* to the Secretary of State for the Colonies.

(No. 51.)

Government House, Sydney,
My Lord Duke, 19 July 1861.

AT Sir William Burton's request, I have the honour to send herewith a statement of his services, and of the circumstances which appeared to him to call for his resignation of the office of President of the Legislative Council of New South Wales.

This document is a narrative, in some sort an impeachment, of the whole policy and proceedings of the existing Ministry, who, on their part, are prepared to combat Sir William Burton's position.

Your Grace will probably be inclined to view what may be urged on the one and on the other side as matter rather for constitutional discussion between those who take opposite sides in the Colony than for imperial cognizance. If, however, you should think proper to institute a minute review of these affairs, and so judge between the parties, I shall take the earliest possible opportunity, on being so instructed, of furnishing you with the necessary materials, which, indeed, comprised the Bills, Reports, Parliamentary Debates, and Proceedings of more than one Session.

In no other way than by so extensive a study can light be thrown on the reasons which induced Ministers to introduce some Bills, to oppose others, and give to a third class a modified opposition or support as the case may have been.

There are some (four) points in Sir W. Burton's statement which I feel called upon to notice, as affecting myself. I will take them in the order of the pages as they occur. I must, however, premise that on my arrival here I found a political storm raging with the utmost violence. Throughout all the different phases which it assumed I have acted on the advice or with the concurrence of my Executive Council.

If the wisdom of the policy I have pursued is to be judged of by its effects, I may with great confidence refer to the present aspect of affairs: the political excitement has calmed down, and the really important question at issue—the reconstruction of the Legislative Council—has been effected on terms counselled by the leaders of the popular party who are in power, and admitted on all hands to have given satisfaction and confidence to the richer classes, and to all whose capital and industry seek permanent investment in the colony.

1st. At page 19, Sir W. Burton mentions that he waited upon me at twenty minutes past 2 o'clock on the 10th May, in company with Mr. Deas Thomson, to present an Address and other papers connected with the business of the Session, and complains that I allowed him to leave without making any explanation of the ministerial intentions.

I could scarcely have done so with propriety: no decision had been formally taken at the time. The Executive Council (the Ministers) had not met to arrange and conclude their plans, and your Grace will, I am persuaded, be of opinion that I was not at liberty to impart to any others, however respectable, the course the Ministers had in view, while it was not definitely settled. What Sir W. Burton expected, as a courtesy to himself, would have been a breach of confidence to the Ministers.

Sir W. Burton was, however, perfectly aware of the importance which I attached to the proceedings of the Legislative Council upon the Land Bills, not on their own account, but on account of the difficulties their rejection would inevitably entail upon the far graver question of the reconstruction of the Legislative Council.

Ten days previously, upon my pointing out the impolicy of further resistance to the Land Bills, under the peculiar circumstances and probability that the Legislative Council might by undue pertinacity permanently injure the interests they wished to protect, and adding that, looking to the results of the General Election and to the position in which Ministers stood, I could take no responsibility for what might occur, Sir W. Burton assured me the Land Bills would certainly pass, and that I might make my mind perfectly easy on the subject. This assurance was, I am persuaded, given in good faith, though his expectations, as well as my own, were disappointed by the event.

It appeared to me that the Land Bills, if open to objection, might be altered and amended in subsequent Sessions, but that which governed the whole issue and rendered it so anxious, was, the expiration in a few days of the Legislative Council, and the necessity for its immediate reconstruction. A faulty reconstruction might prejudice the legislation of the Colony for years to come, and entail permanent injury.

No reconstruction could be effected by the Governor, except with the advice of the Executive Council; and the Executive Council are the men who have for years headed the popular party unanimous in its demand for the Land Bills, and rendered all-powerful in the Legislative Assembly by the recent General Election.

At page 22, amongst the Constitutional courses opened to me, Sir W. Burton enumerates a recommittal of the Bills—the dissolution of the Parliament—a change of Her Majesty's Ministers—or a conference between the two Houses—as to the exact state of matters technically between the two Houses. I can only speak on the authority of Ministers—they point to Amendments insisted upon by the Legislative Assembly—rejected by the Legislative Council by majorities of 20 to five and 15 to five—and they say they were unable to infer from these majorities, and the apparently determined stand, the intention to yield the points on recommittal or in a conference; they add, the Minister who had charge of the Bills in the Legislative Council had submitted to "indignities" in attempting to pass the Bills, and declared "their honour was at stake"—they tendered their advice or their resignations. As to a dissolution of Parliament: It is to be remarked that the Parliament had been dissolved so late as last December—not half-a-year before, on the very points at issue; and as Sir W. Burton himself admits (page 3)—"The opinion of the country had been very unmistakeably given, by the return of such Members to the new Parliament as the constituencies considered were prepared to adopt the particular views contained in the Bill."

As to a change of Ministers: Supported as they were by 60 or 65 Members out of the

the 72, the adoption of such a suggestion would only have involved the Crown in a contest, certain to end in defeat, with the Legislative Assembly and the constituencies.

But it may be said, I might have temporised during the 48 hours which were to elapse before the old nominations to the Legislative Council expired, and the body ceased to exist—perhaps induced Ministers to withdraw their advice; I thought of this, but the objections to such a course seemed grave; it would have satisfied nobody, and settled nothing, and made the reconstruction of the Legislative Council on fair and equal terms between parties next to impossible.

The position would have been this: The Land Bills rejected by the Legislative Council, representing the upper or richer classes—the Ministers apparently acquiescing in the defeat, the people disappointed and distrustful, the Legislative Assembly irritated and exacting. The consequence would have been that the reconstruction of the Legislative Council, which could not be avoided or postponed, and which could only be effected with the advice of the Ministers, could hardly have been effected on any reasonable terms. The Ministers would not have ventured to advise or acquiesce in the nominations of any but decided partisans on the popular side. Now that the business is brought to a fortunate issue, I am persuaded, reflecting upon all that passed, that I was fortunate in adopting the Ministerial advice; it was the least of the evils that stood for choice, and, though hazardous and thorny enough, it was the only path that led to safety. The Legislative Assembly and the public were reassured and contented, the honour of the Ministry vindicated, and themselves left free to act with forbearance to the opposite party, and that wise moderation in the nominations for life to the Legislative Council which they have since evinced.

At page 27 Sir W. Burton complains he was not offered a seat in the reconstructed Council. The Ministers were not inclined to give the necessary sanction of their advice to his reappointment, but wish me to add that, whatever their inclination, room was not left for any consideration on their part, so great was the haste with which Sir W. Burton advertised his house and property for sale, and announced his intention of leaving the Colony.

Page 28, as to the favourable report Sir W. Burton bespeaks from your Grace. Although Ministers have not advised my availing myself of his services in the Legislative Council, and although I may not think the alternatives he proposed at an anxious crisis other than unsafe, and inapplicable to the requirements of the time and the Colony, yet I should be very sorry indeed if, on these accounts, there were withheld any portion of the recognition and respect which are due to his age, his unblemished private character, and his long services as a judge.

I have, &c.
(signed) *John Young.*

Governor Sir *John Young* to the Secretary of State for the Colonies.

(No. 53.)

My Lord Duke, Government House, Sydney, 20 July 1861.

I HAVE the honour to inform your Grace that the Legislative Council of this Colony has been duly reconstructed, as required by the terms of the 3rd clause of the Constitution Act.

2. I enclose copies of the "Gazette" containing a list of the names of the gentlemen appointed. Seats were in the first instance offered to 27 gentlemen, that being the number fixed upon as suitable and convenient; five declined the offer on grounds of a personal and private nature, and one was objected to by Ministers as announcing in his answer his intention of opposing the Land Bills and generally the policy of the Government.

Seats were then offered to three others, of whom two accepted, and one declined on private grounds. This leaves the number at 23 for the present, but it is understood that as occasion may arise four more names may be added, so as to complete the number up to 27, which is taken as the complement not to be exceeded, except under very special and exceptional circumstances.

3. Of this list of 23, 12 were in the late Legislative Council; some others held seats in past times, and three filled the office of Attorney General in former administrations. All are gentlemen of high standing and character, and the names of the ablest and most distinguished persons in the Colony are to be found in the list.

4. The selection has created a very favourable impression on the public mind, and forms a body to which the important functions to be discharged by an Upper House may be safely assigned.

5. There is sent herewith a copy of the Minutes of the Executive Council, which will put your Grace in possession of all particulars, and of the result of the Ministerial deliberations.

6. I have already had occasion, in former Despatches, and in my answer to Sir W. Burton's statement, to speak at length of the perplexities of the situation and the political excitement I had to face on my arrival; I shall not therefore allude to them further than to say that I feel happy in thinking that the reconstruction, though complicated by so many causes of doubt and anxiety, has thus been happily accomplished in accordance with the wise suggestions of your Grace's Despatch of the 4th February last.

I have, &c.
(signed) *John Young.*

The Secretary of State for the Colonies to Governor Sir *John Young.*

(Separate.)

Sir, Downing-street, 26 July 1861.

I HAVE to acknowledge your Despatch, No. 37, of the 21st May, enclosing a copy of the Proclamation by which you had prorogued the Parliament of New South Wales, on the 11th of that month, in consequence of the approaching expiration on the 13th of the period to which the first nominations to the Legislative Council were limited.

With regard to the reconstruction of that body, I have nothing to add to my Despatch of the 4th February last, the recommendations of which I am glad to hear from you will not have been overlooked by yourself and your Ministers in taking the measures necessary for the purpose; but I cannot pass by without notice your report of the means which you took, by the advice of your responsible advisers, to ensure the passing of the Land Bills through the Legislative Council; the creation, namely, upon a sudden, and for a single night, of a number of Legislative Councillors, which you do not specify, but which must have been sufficient to convert a large majority against the Bills into a majority in their favour.

I am fully sensible of the very difficult position in which you found yourself when pressed to take such a course, under a threat of resignation, by Ministers who you say you could not have replaced. I regret, however, that they should have offered you that advice, and that you, even under the circumstances which you describe, should have accepted it. A measure so violent and in its nature so unconstitutional could only be justified by circumstances of the gravest danger and the greatest urgency, which did not, as it appears to me, exist on the present occasion. Your resistance to it could only have led to the same state of things (after, perhaps, a Ministerial crisis) which has actually resulted from the defeat of the attempt to force the Bills through the Council by the counter stratagem to which the Opposition resorted, and would, I can hardly doubt, have received a large amount of approval and support from the public opinion of the Colony, irrespectively of the merits of the measures which happened to be in question.

I have thought it my duty to say so much by way of comment upon a proceeding which is not creditable to the cause of constitutional government in Australia, while it tends to weaken the position of the Governor; but I can at the same time make great allowances for the difficulties of the dilemma in which you found yourself placed so soon after your arrival in a new sphere of duty, and I am sure that you acted as appeared to you, at the moment, best for the public interests.

I have, &c.
(signed) *Newcastle.*

The Secretary of State for the Colonies to Governor Sir *John Young.*

(No. 67.)

Sir, Downing-street, 21 October 1861.

I HAVE the honour to acknowledge the receipt of your Despatch, No. 55, of the 20th July, reporting the reconstruction of the Legislative Council of New South Wales, as required by the 3rd clause of the Constitution Act.

It affords me much pleasure to observe in the list of Legislative Councillors so many names of gentlemen of eminence and tried ability, and it is my earnest hope that the construction of the new Legislative Council may tend to promote the welfare of the Colony.

I have, &c.
(signed) *Newcastle.*

The Secretary of State for the Colonies to Governor Sir *John Young.*

(No. 68.)

Sir, Downing-street, 21 October 1861.

I HAVE the honour to acknowledge the receipt of your Despatch, No. 51, of the 19th July, forwarding a statement by Sir William Burton of the circumstances which led to his resignation of the office of President of the Legislative Council of New South Wales, and also explaining to me your view of the public questions to which this statement refers.

You

You will already have learnt from my Despatch of the 26th of July that, while making every allowance for the difficulties in which you were placed, I was unable to approve the creation of 21 Legislative Councillors for the purpose of carrying a Ministerial measure through the Council. With regard to the other questions raised in Sir William Burton's letter, it does not appear to me necessary or desirable to say more than that I see no reason to doubt that the President and Members of the late Legislative Council were actuated by a sense of duty in the proceedings which they adopted during the last Session of the Parliament of New South Wales.

I have, &c.
(signed) *Newcastle.*

Governor Sir *John Young* to the Secretary of State for the Colonies.

(No. 14.)

Sir, Government House, Sydney, 16 February 1865.

In accordance with the request of Mr. William Forster, late Colonial Secretary, I have the honour to forward the letter* in which he tendered the resignation of his office, for the reasons therein stated.

* The Enclosures to this Despatch will be found on pp. 83–85.

It will only be necessary, I think, to give an outline by way of narrative of the circumstances which led to and accompanied his resignation; for although they bear on the manner in which the issue of the question was brought about, they still have little to do with the question itself.

About a fortnight previous to the meeting of the present Parliament, Mr. Martin, the Premier, mentioned to me his wish to nominate two gentlemen to the Legislative Council. I at once stated the objections which occurred to me, and which I will presently refer to, and after some conversation I parted with Mr. Martin under the impression that the appointments would not be seriously pressed.

About a week later, however, it appeared that Mr. Forster was not satisfied, but insisted on the appointments, and on my definite refusal, his letter of 23rd January 1865, was handed to me.

It will be observed that, in insisting, Mr. Forster had not the support of his colleagues: they had yielded to the gravity of the objections which I urged.

I now pass on to the grounds on which my refusal was based.

The Legislative Council at the time consisted of 32 Members, three being absent in England, one on his passage out from England, and one on the eve of departure from the Colony, so that there were present in the Colony 27 Members available for service. Nine of this number, *i.e.*, one-third, had been appointed since the accession to office of Mr. Martin's Ministry, in October 1863. The minimum number of Members for the Legislative Council prescribed by the Constitution Act is 21. It appeared to me that the creation of nine new members in so short a period was a large addition to the Legislative Council, and would have been so considered even with reference to so large a body as the House of Lords in England; how much greater, then, to so limited a Chamber as the Legislative Council of this Colony.

But was there any imperative reason assigned or existing for the proposed addition or for these appointments? No attempt was made to justify the addition on the ground of public policy or public exigency.

It was not alleged that the due representation of political parties or of any great interest required it. No special or public reason was adduced in its favour. The construction and actual state of the Council afforded no such reason.

As to the gentlemen proposed I desire to say very little, because my refusal was not based on any real or supposed unfitness on their part, but I was not pressed to appoint either of them on the grounds of any peculiar claim or of any public service.

The position in which the Ministry stood at the time that these appointments were proposed was another consideration which had weight with me.

In October 1864, they had met Parliament. In a few days after the Minister for Works had resigned, an Amendment to the Address in the form of a Vote of want of confidence was carried. A dissolution was asked for, and I gave my consent. I could not but observe that the general result of the elections appeared to be adverse to their hopes. The vacancy in the office of Ministers of Works had not been filled, and the Finance Minister had failed to secure a seat.

The Ministry were, as far as it was permitted me to judge, *in extremis*, and so it proved; for, on the day the new Parliament was opened, Mr. Forster's resignation was announced, and an hour after an Amendment on the Address, in the form of a Vote of want of confidence, was carried against the Ministry by a majority of 42 to 14.

For the reasons I have stated, I felt that at the time when these appointments were suggested I might not unreasonably have urged that the action of the Ministry should be limited to the ordinary administration of the Government.

All Mr. Forster's colleagues appeared to feel the weight of my arguments.

So far I have mentioned objections which apply only to the case in hand. I come now to more general considerations, which may be viewed as applying equally to this and to other future proceedings in reference to the Legislative Council.

By the Constitution Act, the number of Councillors is unlimited, subject only to a minimum of 21. But it needs no argument to prove that if every Minister determines to push his advice to the same issue as Mr. Forster, the dignity and usefulness of the Council would be destroyed. On Mr. Forster's principle every Ministry in turn might insist on any number of fresh appointments, to gratify their friends or to secure a majority. If the Governor refused they would resign, and he would in the end be left without the means of forming an Administration; while, if he yielded, there would soon be an end of the Upper House, or at least of its independence, or of any effect or utility which it might have as a deliberative body. Theoretically, in the written Constitution, there is no limit, but practically, to give life to the Constitution, there must be a limit.

Putting aside, therefore, exceptional cases and special exigencies, it appears to me that a limit ought to be observed; and, with a view to its observance, and, indeed, as the only mode that occurs to me of insuring such observance practically, weight should be allowed to attach to the opinion of the Governor as to any proposed increase of the Members, as well as to the propriety of individual appointments. Any increase of numbers should first be formally proposed, and sanctioned by the Governor, before the consideration of particular appointments is entered upon.

At both stages the Crown, or Governor acting in lieu thereof, should have a recognised independent discretion, and no offer of a seat should be made until it has been formally sanctioned by the Governor and Executive Council. The nominations to the Upper House ought not to be viewed as mere ordinary appointments, the refusal to sanction which might justly be considered an interference with proper ministerial action and responsibility.

It seems to me that, by the Constitution Act, Her Majesty's Government and the people of this Colony are entitled to hold the Governor responsible in the exercise of the power conferred on him for the preservation of the Legislative Council as an efficient branch of the Legislature.

But how can this end be attained unless successive Ministries consent to exercise moderation in pressing advice on this point, and recognise the power and responsibility of the Governor in giving or withholding assent?

At the time of the reconstruction of the Legislative Council in 1861 these difficulties were much and anxiously considered, and an effort was made to suggest what might be, subject to exceptional cases, a convenient limitation to the number of the Upper House, to which Mr. Forster takes exception. He appears to misapprehend what took place when he says that a limit was arbitrarily fixed by me to the number of the Legislative Council in concert with his predecessors.

At the time of the reconstruction of the Council I consulted the leaders of the Liberal Party on the one hand, that is, the Ministers then in office, and also with their cognizance I availed myself of the advice of gentlemen of social standing and of leading political position in other sections. In fact, I called into counsel, under the auspices of Mr. Wentworth, the framer of the Constitution Act, several gentlemen of various political opinions who were at that time prominent in Parliament, or in possession of much general influence.

It was understood that Mr. Wentworth was to be the President of the new Legislative Council, and I appointed him to the office as soon as it was formed. After many interviews and much deliberation it was the general opinion of these gentlemen that 27 Members might, with advantage, be considered a convenient usual limit of the Council, and with this view I concurred.

Mr. Cowper and his colleagues recommended that seats should, in the first instance, be offered to 27 gentlemen accordingly. Several declined on various grounds, and eventually 23 only were gazetted. That number was not subsequently augmented beyond 26—during that Administration, which lasted nearly two and a half years afterwards.

Of course it was never contemplated that the Constitution Act could be set aside, or that any succeeding Ministry could be bound by the opinion of their predecessors, although by common assent the convenience of some usual limit might be recognised; neither was it ever contemplated that the Governor could relieve himself of responsibility, by giving beforehand his assent to any unvarying course of action. But I thought that what was then done might with advantage be referred to thereafter by myself and others, not as an absolute guide, but as giving the assistance of the opinion of able and impartial men, who were all equally anxious for the permanent stability of the Constitution.

The recollection of these circumstances weighed, I admit, with me to some extent in arriving at the conclusion that no further addition should be made to the number of the Legislative Council at that time. I thought it unwise, in the absence of any particular reason, to deviate from a course which I had then approved of, and which, if constantly pursued, might gradually be confirmed by usage, and serve to maintain the strength and usefulness of the Council.

Notwithstanding the general views I took of this matter, I showed my willingness to meet the wishes of Mr. Martin's Ministry by increasing the number of the Legislative Council to 27 actually present in the Colony.

I met the wishes of the Ministry, of course, so far as I conscientiously could do so.

Thus I have stated the reasons, both general and particular, which guided me in the performance of the duty and in the exercise of the power intrusted to me by the

Constitution

Constitution Act—reasons which I believe justify the course I have pursued. You will observe from Mr. Martin's letter to Mr. Forster, that the Ministry, with the exception of Mr. Forster, did not meet my refusal by the resignation of their offices.

I hardly feel called upon to notice Mr. Forster's charge of partiality. I am utterly unconscious of any such bias as he has attributed to me, and I deny that there is any foundation for this accusation, which he, and he alone, has so unjustifiably preferred. I read for the first time Mr. Forster's letter a few minutes before I attended a meeting of the Executive Council, and I at once appealed to the Ministers, all of whom, except Mr. Forster, were present, to state openly, in my presence, whether there was, in their judgment, any foundation for such an imputation. They, one and all, on the spot, assured me that they considered the charge unjustifiable and untenable. This disclaimer is repeated in the Premier's letter to Mr. Forster, and if further justification were necessary, I could rely on the verdict of public opinion which Mr. Forster's charge against me called forth, and which, having being contradicted by his colleagues, did not find a single voice of support in the Assembly, and was met with general approbation by the public press of all shades of opinion.

I feel, therefore, that I need do no more than record this, my protest, against an accusation so ignoble and unfounded.

In conclusion, I must add that the position which Mr. Forster has assumed is unfortunate in this respect—that it lessens the safety of the Upper House by seeking to establish the evil precedent that the refusal of the Governor to add to its numbers when urged on no public grounds, but merely for the satisfaction of a Minister or his private friends, may be considered as a legitimate ground for the abandonment of office. The right of a Minister to resign when his advice is not taken is unquestionable, but the right should be exercised in the public interest sparingly and upon sufficient cause.

I have reason, however, for hoping that no difficulties will arise on this question. I sincerely trust that such may be the case, and that the moderation and wisdom of the leading men in the various sections may induce them to exercise with a cautious sense of their responsibility the powers which the Constitution places in the hands of the holders of office for the time being.

I have, &c.
(signed) *John Young.*

The Secretary of State for the Colonies to Governor Sir *John Young*.

(No. 37.)

Sir, Downing-street, 26 May 1865.

I HAVE the honour to acknowledge the receipt of your Despatch, No. 14, of the 16th of February last, enclosing a letter of remonstrance from your late Colonial Secretary, Mr. W. Forster, against the course which you took in refusing to appoint two additional Members to the Legislative Council on the recommendation of your responsible advisers. The reasons which you give for this refusal appear to me sound and convincing; and I am glad to perceive that Mr. Forster's proceedings have not met with the approval of his colleagues.

I have, &c.
(signed) *Edward Cardwell.*

Governor the Earl of *Belmore* to the Secretary of State for the Colonies.

(No. 109.)

My Lord Duke, Government House, Sydney, 29 September 1868.

I HAVE the honour to inform your Grace that I have, at the instance of my Responsible Advisers, appointed three additional Members to the Legislative Council.

2. The only reason for this addition is, as stated in the enclosed letter from the Attorney General, the difficulty experienced in securing a quorum for the transaction of business, and on that ground alone I have sanctioned the increase. Enclosure No. 1. No. 2

3. As I have not been able to find any instructions on record making it necessary for me to refer to your Grace before taking this step, as it is an understood thing that, as a rule, no nomination to the Legislative Council is to be made during the Session of Parliament, and as Parliament is appointed to meet on the 13th proximo, I appointed, on the 28th instant, with the advice of the Executive Council, the following gentlemen to be Members of the Legislative Council, viz.:—

Frederick Matthew Darley, Esq., barrister-at-law;
John Richardson, Esq., formerly a Member of the Legislative Assembly; and
Thomas Holt, Esq., formerly a Member of the Legislative Assembly, and some time Colonial Treasurer.

4. Two death vacancies also have occurred during the recess; these I have filled up by the appointment of—

Henry Moore, Esq., a merchant, and the agent to the Peninsular and Oriental Steam Navigation Company; and

Alexander Park, Esq., a former Member of the Council before its reconstruction.

5. The Council, thus increased, now consists of 30 Members, being about two-thirds of its number prior to 1861.

6. I trust that what I have done will meet with your Grace's approval.

I have, &c.
(signed) *Belmore.*

Enclosures.

The Attorney General to Governor the Earl of *Belmore.*

My Lord, Attorney General's Office, 24 September 1868.

WHEN the first permanent nominations to seats in the Legislative Council were made by Sir John Young, an understanding was come to (as he informed me) between him and his then Executive Council that the number of Members should not, as a rule, be allowed to exceed 27. The Constitution Act fixes a minimum number of 21, but there is no maximum; and, consequently, it is open to the Governor, with the advice of the Executive Council, to appoint as many Legislative Councillors as he may think expedient. When I went into office in 1863, my colleagues and myself acquiesced in the view taken by Sir John Young in this matter, and we did not press upon his Excellency to depart from the understanding already mentioned. The gentlemen who succeeded us in 1865 adhered to the same understanding, and no attempt, so far as I am aware, was made by them to act in opposition to it.

The experience of the last two Sessions, has, however, shown that, with so small a number as 27, it is very difficult to procure the requisite quorum to enable the House to proceed with its business. Many of the Members reside at considerable distances from Sydney, and cannot be expected to give that continuous attention to their legislative duties which residents in Sydney might render without much inconvenience. Under these circumstances, it has occurred to my colleagues and myself that it would greatly facilitate the dispatch of business in the Legislative Council if the number of Members were increased to 30, and we accordingly recommend that your Lordship will be pleased to sanction such increase.

I have, &c.
(signed) *James Martin.*

Governor the Earl of *Belmore* to The Attorney General.

Sir, Government House, Sydney, 25 September 1868.

I HAVE to acknowledge your letter of the 24th instant, recommending me to sanction an increase in the number of the Legislative Council from 27 to 30 Members.

I am aware of the reasons which led to the understanding between my predecessor and his succesive Executive Councils that the number of the Legislative Council should be limited to 27, and I fully admit the force of these reasons.

As, however, it now appears to be very difficult to procure the requisite quorum to enable the House to proceed with its business, and as such a state of things cannot but lead to public inconvenience, I am prepared to sanction, for the reason put forward in your letter, an increase of the number of the Legislative Council to a maximum of 30 Members.

I have, &c.
(signed) *Belmore.*

The Secretary of State for the Colonies to Governor the Earl of *Belmore.*

(No. 2.)

My Lord, Downing-street, 18 December 1868.

I HAVE to acknowledge the receipt of your Lordship's Despatch, No. 109, of the 29th of September, reporting that on the recommendation of your Responsible Advisers you had appointed three additional Members to the Legislative Council.

Any increase of the number of the Legislative Council is likely to be used as a precedent for further additions, and is therefore to be regretted; but I see no cause for doubting that the reasons for the increase adduced on the present occasion are *bonâ fide* and sufficient.

At the same time I should have been glad to have been assured that the addition was not in fact politically material as altering the balance in any important degree in favour of the Ministry by whom it was suggested by you.

I have, &c.
(signed) *Granville.*

Governor the Earl of *Belmore* to The Secretary of State for the Colonies.

(No. 109.)

My Lord, Govenment House, Sydney, 14 July 1869.

I REFERRED your Lordship's Despatch, No. 2, of the 18th December 1868, on the subject of the appointment of three additional Members of the Legislative Council by the advice of my late Government, to the present Prime Minister, with reference to its concluding paragraph.

2. Mr. Robertson has this day submitted to me the accompanying Paper on the general question of limiting the numbers of the Legislative Council, to which I beg to draw your Lordship's attention.

I have, &c.
(signed) *Belmore.*

(Enclosure.)

The Colonial Secretary to Governor the Earl of *Belmore.*

MEMORANDUM.—Your Excellency's Memorandum accompanying the Despatch of the Right Honourable the Secretary of State for the Colonies, dated 18th December 1868, No. 2 (M. 2190, B), is marked "private"; and all that your Excellency therein appears to desire at my hands is, my concurrence in an assurance to Lord Granville, that the addition made by the late Ministry to the number of the Legislative Council, as then existing, was not in fact politically material as altering the balance in any important degree in favour of the Ministry by whom it was suggested to your Excellency; and I should, I beg to say, be most glad to concur in such assurance and make no further comment, did I not conceive that the Despatch was based on a misapprehension which it is very important in the true interests of this Colony that I should endeavour to remove.

I presume, from the tenour of His Lordship's Despatch, that he is under the impression that a maximum number of the Legislative Council has been defined or implied; and that the Responsible Ministers of your Excellency may not in their discretion advise your Excellency to exceed it. If such be his Lordship's meaning, I am compelled, with all deference for so high an authority, to say that this cannot be admitted by the Members of the present Administration of this Colony.

The 2nd section of the Act 17 Victoriæ, No. 41, enacts that it shall be lawful for Her Majesty, by an Instrument under the Sign Manual, to authorise the Governor, with the advice of the Executive Council, in Her Majesty's name, by an Instrument or Instruments under the Great Seal, to summon to the said Legislative Council of the Colony such persons, not being fewer than 21, as the Governor and Executive Council shall think fit.

In the third paragraph of your Excellency's Instructions, to which I trust that I may be permitted to refer, attention is particularly drawn to the terms above quoted; and the paragraph ends with the following words, but without any intimation, implied or expressed, of a limit to the number of Members to be appointed by your Excellency with the advice of the Executive Council:—"We do, therefore, by these Our Instructions authorise you from time to time to summon to the said Legislative Council such persons as you and Our said Executive Council shall think fit."

It is thus, I submit to your Excellency, abundantly clear that the law fixes no limit to the number of the Legislative Council of the Colony, and that the determination beyond the legal minimum of 21 rests in your Excellency with the advice of your Ministers. There is no warrant in law for a contrary conclusion, and it follows, therefore, that it is to be hardly imagined that the Secretary of State for the Colonies would, unless under some misapprehension, have used the terms "increase the number of the Legislative Council," or expressed a regret that an addition has been made, or that it was likely to be used as a precedent for further additions. The fact is, that additions have been made from time to time, and no question has ever been raised as to the legality of such additions, or of the right of Ministers in their discretion to advise them. I think, therefore, that the Right Honourable the Secretary for the Colonies will scarcely deem it proper for him so to question or comment on the advice offered, or that may be offered by the constitutional Ministers of Her Majesty's Representative in a British colony having a Representative Assembly and Responsible Government, as to practically have the effect of nullifying without law in a material respect a most important constitutional principle, such as the right of extension of the Legislative Council. His Lordship will no doubt remember that even British Parliamentary Legislation "on any subject of exclusively internal concern" in any such Colony, has been pronounced, as a general rule, unconstitutional, and only to be exercised in extreme cases in which necessity at once creates and justifies the exception. Parliamentary Paper, 1839, No. 118, page 7:—May's Constitutional History of England, vol. 2, folio 371.

In the Colonial Debates during the passage of the Constitution Act (*see* "Sydney Morning Herald," 22 December 1853—an extract is enclosed), Mr. Wentworth, who is

the author of that Act, substantially advocated a nominee Upper House because of its flexible and expansive character, and he saw therein the safety of the Constitution. His remarkable words were, that an Elective Upper House would lead to a revolution; that it would control the Lower House, and trample on the rights of the people.

The recent "deadlock" in the neighbouring Colony of Victoria has shown some of the difficulties of a fixed number. With such a principle established, and with Members, like ours, holding their seats for life, our difficulties would not only be equal to those of Victoria with Members chosen under the elective principle and for a short term of years, but would be likely some time or other to overwhelm the Colony with anarchy and bloodshed. Mr. Wentworth was in favour of a nominee Upper House, which, he asserted, would give way rather than excite a revolution, and also because he felt assured that the Responsible Minister of the day would compel it to give way in such an exigency.

I may perhaps, in this view of the Constitution Act under which this Colony is governed, urge the right of any Ministry, having what they believe a great national measure to carry through the Legislative Council, to see in its importance, if obstructed therein, a reason to advise the Governor for the time being to summon such a number of additional Members as may secure the safety of the measure. His Excellency of course would possess as perfect a right to refuse to act upon such advice and to call other Advisers to his aid. Whether or not it would be proper in a Minister to advise so extreme a course, or in a Governor to refuse compliance therewith, would, I take it, depend on the justice and importance of the measure involved,—on the amount and length of continuance of the obstruction of the nominated Legislative Council, on the proportionate number and importance of the majority of the colonists demanding it, and on the depth and fervour of their determination in doing so. In other words, the wisdom of the course could only be determined by the effect which compliance or refusal would have on the prosperity of the Colony and the welfare and happiness of its people.

I desire, therefore, to convey to your Lordship, not only from myself, but from my Colleagues in the Government, that we would consider any action of ours, having a tendency, however remotely, to limit the number of the Legislative Council as at present constructed, as an unwarrantable abandonment of our duty as Ministers alike responsible to your Excellency, to the Parliament, and to the people of the Colony.

Colonial Secretary's Office, Sydney, July 1869. (signed) *John Robertson.*

EXTRACT from Mr. *W. C. Wentworth's* Speech on the Third Reading of the Constitution Bill. ("S. M. Herald," 22 December 1853.)

"With reference to the clamour which had been raised about the nominee Upper House being likely to override and undo all Constitutional Government, and to surrender all the power into the hands of the squatters,—the number of elected Members in the Lower House, which was to consist of no fewer than fifty-four members, would make it utterly impossible for such to be the case. A House so constituted would be, as it had always when occasion required it, proved itself to be, too powerful for the Upper House, and even for the Throne. A proof of this power had recently been exhibited in England; and many such proofs existed in earlier history. An Upper House had occasionally attempted to resist the popular will, but never determinately and with ultimate success, because the popular will was found to be irresistible, and an Upper House which would be obstinate in its resistance would surely be swept away. The reasons cited by the opponents of the nominee principle, in behalf of an elective Upper House as superior to a similar structure on the nominee principle, was its unexpansive and inflexible character; and for the very same reason he had been strenuous in his opposition to the elective principle prevailing in the Upper House. The erection of such a body would lead to a revolution. (Hear, hear.) It would control the Lower House, and could trample on the rights of the people. Therefore he was in favour of a nominated Upper House, which he felt assured would and must give way, rather than excite a revolution, and also because he felt assured that the responsible Minister of the day would compel it to give way in such an exigency. He was opposed to the principle of an elective Upper House on account of its inflexible and unexpansive character, an argument which, though used in its behalf, was fraught with the most dangerous character; and because he preferred the British Constitution, which had stood the test of ages, which had worked well, and had been found congenial to the feelings and sentiments of Englishmen. (Loud cheers.) It was because under such a Constititution Englishmen could live contentedly and securely, that he proposed giving such a Constitution to the Colony, and such an Upper Chamber to the Legislature; and he, therefore trusted the House would show their concurrence in his opinion by passing the third reading of the Bill by a large majority. (Loud and prolonged cheering.)

The Secretary of State for the Colonies to Governor the Earl of *Belmore*.

(No. 77.)

My Lord, Downing-street, 2 October 1869.

I HAVE the honour to acknowledge the receipt of your Despatch, No. 109, of the 14th of July, enclosing a Memorandum by Mr. Robertson on the subject of my Despatch, No. 2, of the 18th December last, relating to some additional appointments which had been made to the Legislative Council of New South Wales.

When writing that Despatch I was fully aware that the number of the Upper House in New South Wales was unlimited. I am also fully aware that, on certain critical occasions, it may become not only expedient but indispensable to bring the two Houses into harmony, by creating, or threatening to create, a number of Legislative Councillors sufficient for that purpose. But it is not the less clear that the whole value and character of the Upper Chamber will be destroyed if every successive Ministry is at liberty, without any sufficient occasion, to obtain a majority in the Council by the creation of Councillors. To prevent this, some constitutional understanding, having in the public eye the form of a valuable though not absolutely inflexible precedent, and limiting the circumstances under which such creations can properly take place, is desirable. Such an understanding did, in fact, exist between Sir John Young and his successive Ministers; and the object of my Despatch of the 18th of December was to enforce on you the inconvenience of any course which was calculated, without necessity, to impair the authority of that understanding, and to the expediency of making it clear, in the interest of the Colonial Constitution, that any necessary violation of its letter was not really a violation of its spirit; that is to say, that it was resorted to not to strengthen a party, but in reality for the convenience of legislation.

I have, &c.
(signed) *Granville*.

PROCEEDINGS of the Executive Council, on the 28th March 1861, relative to the appointment of the Honourable *John Robertson* as a Member of the Legislative Council.

Minute No. 61/13.—Confirmed 8th April 1861.

HAVING been invited to the consideration of the subject by His Excellency the Administrator of the Government, at the instance of the Honourable the Vice-President, the Council advise that the Honourable John Robertson be appointed to a seat in the Legislative Council.

(signed) *Edward C. Merewether*,
Clerk of the Council.

PROCEEDINGS of the Executive Council, on the 2nd September 1861, relative to the appointment of new Members of the Legislative Council.

Minute No. 61/40.—Confirmed 9th September 1861.

REFERRING to the proceedings on the 11th June last, His Excellency the Governor, at the instance of the Honourable the Vice-President, invites the attention of the Council to the desirability of making some further appointments to the Legislative Council.

The Council advise that Samuel Deane Gordon and Edward Butler, Esquires, both of Sydney, who have expressed their willingness to accept seats in the Legislative Council, be appointed Members of the said Council, and summoned thereto accordingly.

(signed) *Charles Cowper*, Jun.,
Clerk of the Council.

MINUTE 62/34, 13th October 1862.—Confirmed 20th October 1862.

HIS EXCELLENCY the Governor acquaints the Council that William Charles Wentworth, Esquire, has resigned the office of President of the Legislative Council, and invites their attention to the necessity of appointing his successor.

His Excellency having informed the Council that Terence Aubrey Murray, Esquire, late Speaker of the Legislative Assembly, has expressed his willingness to accept a seat in the Legislative Council, they thereupon advise that Mr. Murray be summoned to the Legislative Council accordingly, and further advise that he be thereupon appointed President.

Terence Aubrey Murray, Esquire, having been introduced, His Excellency, under the 33rd clause of the Constitution Act, administered to him the prescribed oath, and he then withdrew.

The Council upon the present occasion desire to place on record the deep sense which they entertain of the valuable services rendered to the Colony by Mr. Wentworth, in having accepted the office of President of the Legislative Council, and of the manner in which he has fulfilled the important duties of that high position during a very critical period in the history of the Colony.

(signed) *Charles Cowper*, Jun.,
Clerk of the Council.

The Secretary of State for the Colonies to Governor Sir *John Young*.

(No. 14.)

Sir, Downing-street, 5 February 1863.

I HAVE received your Despatch, No. 93, of the 18th of October, informing me that, acting on the advice of the Executive Council, you had nominated Mr. Terence Aubrey Murray, the Speaker of the Legislative Assembly, to a seat in the Legislative Council, and the Presidency of the Council, in succession to Mr. Wentworth, who was about to proceed to this country.

You further inform me that the Legislative Assembly have unanimously selected Mr. John Hay to fill the office of Speaker, which had been vacated by Mr. Murray.

I have, &c.
(signed) *Newcastle*.

MINUTE of the Colonial Secretary (Mr. *Cowper*).

Appointments to the Legislative Council.

GEORGE HENRY COX, Esquire, Mudgee; Edward H. Lloyd, Esquire; William Walker, Esquire, Sydney; Robert Towns, Esquire, Sydney.

PROCEEDINGS of the Executive Council, on the 17th June 1863, with reference to the appointment of certain Gentlemen to seats in the Legislative Council.

Minute 63/21.—Confirmed 24th June 1863.

HAVING been invited to the consideration of the subject by His Excellency the Governor, at the instance of the Honourable the Colonial Secretary, the Executive Council advise that the following gentlemen, who have intimated their willingness to accept seats in the Legislative Council, be forthwith summoned thereto accordingly, viz. :—(1) George Henry Cox, Esquire, Mudgee; (2) Edward Henry Lloyd, Esquire, Sydney; (3) Robert Towns, Esquire, Sydney; and (4) William Walker, Esquire, Sydney.

(signed) *Chas. Cowper*, Jun.,
Clerk of the Council.

Minute 63/21, 17th June 1863.—Confirmed 24th June 1863.

MINUTE of Colonial Secretary (Mr. *Forster*).

23 November 1863.

Edward David Stewart Ogilvie, Esq., Yulgilbar, Clarence River.
John Blaxland, Esq., The Hermitage, Ryde.
Robert Johnson, Esq., Brooksby, Double Bay, Sydney.

PROCEEDINGS of the Executive Council, on the 23rd November 1863, with reference to the appointment of certain Gentlemen to seats in the Legislative Council.

Minute 63/43.—Confirmed 1st December 1863.

HAVING been invited to the consideration of the subject by His Excellency the Governor at the instance of the Honourable the Attorney General, the Executive Council advise that the following gentlemen, who have intimated their willingness to accept seats in the Legislative Council, be forthwith summoned thereto accordingly, viz. :—

1. John Blaxland, Esq., The Hermitage, Ryde;
2. Robert Johnson, Esq., Brooksby, Double Bay, near Sydney ; and
3. Edward David Stewart Ogilvie, Esq., Yulgilbar, Clarence River.

(signed) *Alex. C. Budge*,
Clerk of the Council.

MINUTE of Colonial Secretary (Mr. *Forster*).

Joseph Docker, Esq.

LET the papers necessary to the nomination of the above to the Legislative Council be prepared.—*W. F.*

PROCEEDINGS of the Executive Council, on the 1st December 1863, relative to the appointment of *Joseph Docker*, Esq., to a seat in the Legislative Council.

Minute 63/44.—Confirmed 7th December 1863.

HAVING been invited to the consideration of the subject by His Excellency the Governor, at the request of the Honourable the Attorney General, the Executive Council advise that Joseph Docker, Esq., of Scone, who has intimated his willingness to accept a seat in the Legislative Council, be forthwith summoned thereto accordingly.

(signed) *Alex. C. Budge,*
Clerk of the Council.

MINUTE Paper for the Executive Council.

Crown Law Offices, Sydney, 19 May 1864.

I RECOMMEND that Thomas Icely, of Coombing Park, near Carcoar, Esq., be appointed a Member of the Legislative Council of New South Wales.

(signed) *James Martin,*
Attorney General.

MINUTE Paper for the Executive Council.

Crown Law Offices, Sydney, 19 May 1864.

I RECOMMEND that Alexander Campbell, of Rosemont, near Sydney, Esq., be appointed a Member of the Legislative Council of New South Wales.

(signed) *James Martin,*
Attorney General.

MINUTE Paper for the Executive Council.

Crown Law Offices, Sydney, 14 October 1864.

I RECOMMEND that the following gentlemen be appointed Members of the Legislative Council of New South Wales, viz.:—

1. James Chisholm, of Kippilaw, Esquire.
2. Francis Lord, of St. Leonards, Esquire.
3. Sir William Macarthur, of Camden.

(signed) *James Martin,*
Attorney General.

THE Colonial Secretary to Governor Sir *John Young*.

Sir, Sydney, 23 January 1865.

YOUR Excellency having declined to nominate to the Legislative Council the two additional Members lately recommended by my colleagues and myself, through the Honorable the Attorney General, I consider it my duty to resign the office of Colonial Secretary, together with all other offices thereto appertaining. And as I understand your Excellency's objection to the nominations in question is in no way founded upon personal reasons, but rests chiefly upon the assumed desirability or expediency of confining the number of Members of the Legislative Council within a certain fixed limit, arbitrarily determined by your Excellency, in concert with our predecessors, but never assented to by my colleagues or myself, and wholly without authority or recognition from the Constitution Act, or from any other statute, I feel bound to place on record my respectful but most emphatic protest against what appears to me an unwise and unconstitutional attempt on your Excellency's part to control the operation of our constitutional laws in a manner calculated to favour the political opponents of the present Ministry, and to paralyze the action of representative institutions. And I take occasion further to remark

upon the extraordinary contrast presented on the one hand by your Excellency's unwillingness to accept the recommendation of my colleagues and myself in this particular instance, as well as in other instances of a similar kind, which I need not specify, and on the other by the apparent readiness evinced by your Excellency in acting upon similar recommendations from the Ministry that preceded ours, as, for instance, on that memorable occasion when, with the concurrence and by the authority of your Excellency, twenty-one new Members were, during the last Session of the former Legislative Council, suddenly and simultaneously nominated to that body, for the notorious and openly avowed purpose of rescuing the then Ministers out of a purely political difficulty; and again, on a later occasion, when, in constructing afresh the present Legislative Council, your Excellency and the Executive Council used their formal authority expressly to secure for the same Ministers what, in the peculiar language of that Minute of the Executive Council, by means of which this piece of business was transacted, was termed a "fair working majority," or, in other words, a majority to aid in retaining the same Ministers in office. The cases to which I have above referred, I regret to say, appear to me to betray a degree of partiality on your Excellency's part towards our predecessors, as compared with the Members of the present Administration, inconsistent with your Excellency's position as Her Majesty's Representative in this Colony, and of which my colleagues and myself have some reason to complain. I have accordingly the honour to request that your Excellency will forward a copy of this letter to the Secretary of State for the Colonies.

I have, &c.
(signed) *William Forster.*

THE Colonial Secretary to the Attorney General.

Sir, Colonial Secretary's Office, Sydney, 24 January 1865.

I HAVE the honour to enclose, with a view to its being laid before the Executive Council, for your and their information, a copy of a letter which I yesterday had the honour of transmitting to His Excellency the Governor, conveying my resignation of the office of Colonial Secretary, together with all other offices thereto appertaining, and containing a statement of the circumstances under which I have felt it my duty to adopt this course. I need scarcely say that I regret exceedingly being compelled, by what appears to me an ill-judged resistance on His Excellency's part to the wishes of his Constitutional Advisers, to separate myself from your Ministry at the present crisis of public affairs. I am confident, however, that the principles on which I have acted, and which I have endeavoured to maintain, have the unanimous concurrence of yourself and your other colleagues, and I trust may meet with the approval of the public generally.

I have, &c.
(signed) *William Forster.*

THE Attorney General to the Colonial Secretary.

My dear Forster, Attorney General's Office, 26 January 1865.

I EXCEEDINGLY regret that you have thought it your duty to withdraw from the Ministry, in consequence of the refusal of His Excellency to appoint to the Legislative Council two gentlemen whose names were submitted to him by the Cabinet, through me, a few days since. I entirely concur with you in deploring His Excellency's refusal. Had His Excellency declined to act upon the recommendation of the Cabinent previously to the late vote of censure, which led to the dissolution, I think that we then might have most properly tendered our resignations to him on that ground, but I do not think that such a course can now be taken with any degree of propriety, when there is good reason to believe that on Friday next an Amendment to the Address will be moved, with every probability of its being carried. I think that it would betray pusillanimity on our part were we to evade the issue which will then be raised, by retiring from office on the avowed ground of His Excellency's refusal to act in a particular instance on our advice.

Nothing has occurred between His Excellency and the present Cabinet during the fifteen months that we have been in power that can fairly call upon us to place on record our opinion of the transactions to which you refer.

My other colleagues and myself, equally with you, concur in the principle which has led to your resignation, if we are right in understanding that principle to be a determination to withdraw from office on the refusal of the Governor to act upon our advice in any matter which we may think it our duty seriously to insist on; but, as already stated, we differ from you entirely as to the time and occasion which you have selected for the application of that principle; neither can we join with you in expressing the opinion, as you have done, that His Excellency has betrayed partiality towards our predecessors as compared with ourselves. There were many things done by His Excellency at the instance of the late Administration which we could not approve, and as the like could never by any possibility have been recommended by us, such things can hardly form legitimate

legitimate topics for comparison or contrast. In my own personal intercourse with His Excellency, I have at all times found a courteous readiness on his part to act in accordance with constitutional principle, and I do not remember any instance other than that which has led to your resignation in which he has declined to act on any recommendation of the Cabinet. While regretting his refusal, I, at the same time, think that it was unwise of you to avail yourself of this misunderstanding to withdraw at so peculiar a crisis as the present. I am aware that you care as little for the censure of the Assembly as I do, so long as we are both conscious that we have done nothing to deserve it; but, however we may disregard that censure, it is, I think, our duty manfully to meet it. My colleagues, as well as myself, are all perfectly satisfied that in what you have done you have not been actuated by any desire to throw impediments in our way, but solely by a determination to vindicate your position as a Responsible Adviser of the Crown. Although our views on this matter differ from yours, we know that our conduct in continuing in office will not be attributed by you to any motive other than that which I have already expressed. It is His Excellency's wish that you should retain your present office until your successor is appointed.

Yours very faithfully,
(signed) *James Martin.*

MINUTE Paper for the Executive Council.

Colonial Secretary's Office, Sydney, 6 July 1865.

I RECOMMEND that Elias Carpenter Weekes, Esquire, be appointed a Member of the Legislative Council.

(signed) *Charles Cowper.*

MINUTE Paper for the Executive Council.

Crown Law Offices, Sydney, 23 May 1866.

I RECOMMEND that the undermentioned gentlemen be appointed Members of the Legislative Council, viz.:—James Macarthur, Esquire, of Camden Park, Camden; Edward Cox, Esquire, of Fernhill, Mulgoa; and Hugh Wallace, Esquire, of Nithsdale.

(signed) *James Martin*, A.G.

MINUTE Paper for the Executive Council.

Crown Law Offices, Sydney, 28 February 1867.

I RECOMMEND that Patrick Alfred Jennings, Esquire, of Warbreccan, Deniliquin, be appointed a Member of the Honourable Legislative Council of New South Wales.

(signed) *James Martin.*

MINUTE Paper for the Executive Council.

Colonial Secretary's Office, Sydney, 13 June 1867.

I RECOMMEND that John Hay, Esquire, of Woollahra North, be appointed a Member of the Legislative Council of New South Wales.

(signed) *Henry Parkes.*

MINUTE Paper for the Executive Council.

Colonial Secretary's Office, Sydney, 1 July 1867.

I RECOMMEND that William Busby, of Cassilis, Esquire, be appointed a Member of the Legislative Council.

(signed) *Henry Parkes.*

MINUTE of the Attorney General.

PREPARE Minute for next meeting of the Executive Council, recommending the appointment to the Legislative Council of the following gentlemen, viz.:—Alexander Park, Esq., of Lewinsbrook, Paterson; Henry Moore, Esq., of Barncleuth, Sydney; Thomas Holt, Esq., of The Warren, Cook's River; Frederick Matthew Darley, Esq., of Woollahra; and John Richardson, Esq., of The Grange, Bourke-street, Sydney.—*J.M., A.G.*, 25th September 1868.

MINUTE Paper for the Executive Council.

Crown Law Offices, Sydney,
28 September 1868.

I RECOMMEND the appointment of the undermentioned gentlemen as Members of the Legislative Council, viz.:—Frederick Matthew Darley, of the Edgecliff-road, Woollahra; Thomas Holt, of The Warren, Cook's River; Henry Moore, of Barncleuth, Sydney; Alexander Park, of Lewinsbrook, Paterson; and John Richardson, of Bourke-street, Surry Hills.

(signed) *James Martin.*

MINUTE Paper for the Executive Council.

Colonial Secretary's Office, Sydney,
5 December 1868.

I RECOMMEND the appointment of Robert Owen, Esq., to be a Member of the Legislative Council.

(signed) *John Robertson.*

COPY of Telegram from the Hon. *John Robertson*, Esq., holding office of Colonial Secretary and Premier, dated 29th June 1869, to the Hon. *Charles Cowper*, Esq.

Dubbo.

"DID you ever consent, by Minute or otherwise, to limit the number of appointments to the Legislative Council?" Immediate.

COPY of Reply, dated Dubbo, 30th June 1869, of the Hon. *Charles Cowper*, Esq.

"Dubbo.

"I DO not remember ever to have pledged myself, either verbally or in writing, to such an agreement; and unless document can be produced to the contrary, I do not believe that I ever did so."

To the Hon. John Robertson, Esq.,
Colonial Secretary, Sydney.

MINUTE Paper for the Executive Council.

Colonial Secretary's Office, Sydney,
25 January 1870.

I RECOMMEND the appointment of Charles Campbell, of Newtown, and Thomas Ware Smart, of Mona, Darling Point, Esquires, as Members of the Legislative Council.

(signed) *Charles Cowper.*

MINUTE Paper for the Executive Council.

Colonial Secretary's Office, Sydney,
27 May 1870.

I RECOMMEND that William Bede Dalley, Esq., be appointed a Member of the Legislative Council.

(signed) *Charles Cowper.*

MINUTE Paper for the Executive Council.

Colonial Secretary's Office, Sydney,
4 August 1870.

I RECOMMEND that the Honourable Julian Emanuel Salamons, Esq., Solicitor General, be appointed a Member of the Legislative Council.

(signed) *Charles Cowper.*

MINUTE Paper for the Executive Council.

Colonial Secretary's Office, Sydney,
5 June 1872.

I RECOMMEND the appointment of the Honourable Saul Samuel, Esq., as a Member of the Legislative Council.

(signed) *Henry Parkes.*

APPENDIX II.

CONSTITUTION of Legislative Council (further Despatches respecting).

Presented to both Houses of Parliament, by Command.

SCHEDULE.

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1.	The Governor to the Secretary of State, No. 34. 10th August 1872 - - - -	87
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No. 1.

Governor Sir *Hercules Robinson* to the Secretary of State for the Colonies.

(No. 34.)

My Lord, Government House, Sydney, 10 August 1872.

I RECEIVED yesterday afternoon, from the Colonial Secretary, the accompanying Minute of the Cabinet upon the constitution of the Legislative Council with a request that it might be transmitted to your Lordship by the mail which closes to-day.

2. I propose by the next opportunity to submit to your Lordship a few observations upon the subject to which the Minute refers.

I have, &c.

The Right Honourable
The Earl of Kimberley,
&c. &c. &c.

(signed) *Hercules Robinson.*

Enclosure in foregoing.

MINUTE of Cabinet.

Members Present:

The Vice-President of the Executive Council.
The Colonial Secretary.
The Colonial Treasurer.
The Secretary for Lands.
The Secretary for Public Works.
The Postmaster General.
The Solicitor General.

ON behalf of your Excellency's Advisers, I have the honour to submit the following views which are entertained by the present Administration on the state of the Legislative Council of this Colony, and the serious grounds for apprehension that, as now constituted, that body will fail to work in harmony with the elective branch of the Legislature, or in conformity to the constitutionally ascertained wishes of the people.

Your Excellency will recollect that, soon after your arrival in the Colony, and some time before the defeat of the Border Duties Bill in the Legislative Council, I took occasion, in my conversations with you, to express my apprehension that the Bill would be lost in that Chamber, notwithstanding that the measure was then passing through the newly-elected Assembly by large majorities, and was framed to give effect to a policy confirmed by the result of the late appeal to the electors, and on which principally the late Administration had been removed from office. On these occasions I explained that a large number of the appointments to the Council had been made under the advice of Sir James Martin, and that several of the gentlemen so appointed were not in any other respect known to political life, and, without any personal disrespect, might be said to be gentlemen with no ascertainable political opinions. I explained further, that two members, from advanced age and paralytic affliction, were rendered incapable of attending to their duties; that one Member, owing to private circumstances, had withdrawn himself to a great distance from Sydney, where he was engaged in avocations which seemed to render his attendance next to impossible; that one Member was absent in Europe; and

that several other Members very seldom attended, from age, impaired health, the distance of their residences from Sydney, the nature of their occupations, and from other causes. I stated at the same time, on the authority of the Vice-President of the Executive Council (who represents the Government in the Legislative Council), that during the period your present Advisers have held office, up to the date of my conversations, it was difficult to keep a quorum together for the transaction of business. I learn to-day from the Clerk of Parliaments that three Members have never appeared in their places this Session, and that 14 have been absent from half the sittings, which have been 26 in all.

It has been ascertained that the exact number of Sir James Martin's appointments is 15 out of a House of 31 Members, and that not more than three of the other appointments have been made when I have myself had the honour to hold office. Mr. Hay and Mr. Busby were appointed by Mr. (now Sir James) Martin, during the time I held office with that gentleman, from January 1866 to September 1868; and Mr. Samuel was appointed a short time ago by your Excellency on my recommendation.

I have stated these circumstances in detail, because they seem to throw light upon the positive intimation repeatedly made to Ministers before the Border Duties Bill left the Assembly, and in apparent derision of the majorities by which it was supported, that it would be defeated in the Council.

I now come to that defeat. The second reading of the Bill was moved in a House of 17 Members, exclusive of the President; and the division showed eight in favour of the Bill, and nine against it. The eight Members in favour of the Bill included several of the most considerable of our public men. Mr. Deas Thomson was many years Colonial Secretary; Mr. Hay held office in Mr. Stuart Donaldson's Administration, and has passed the Chair of the Assembly; Mr. Weekes and Mr. Samuel held office as Colonial Treasurer in several Administrations; Mr. Owen and Mr. Holt were also Members of former Administrations. On the other side, no person of political consequence voted, if indeed Mr. Docker, the late Postmaster General, be excepted, who has never sat in the Assembly. I append (marked A.) the article on the occurrence published by the "Sydney Morning Herald," the leading journal of the Colony, which has always strongly supported the character and privileges of the Legislative Council. The resolutions of which I gave notice in the Assembly and afterwards withdrew (Appendix marked B.) correctly state the case as between the Council and the Country.

It appears to your Excellency's Advisers that they can look forward with little confidence that any measure passed by the Assembly and supported by public opinion, however important its character may be, will be considered by the Council with due regard to the interests affected by it and the expressed wishes of the people, after the course adopted on the Border Duties Bill, which embodied a policy so clearly and emphatically supported by the elective branch of the Legislature and by the Constituencies.

Under these circumstances, it devolved upon your Excellency's Advisers to decide upon the course they were prepared to take on the loss of a measure which they considered necessary to the good government of the Colony. Possessing the support of the Assembly, and sustaining defeat in the Council by a few gentlemen in the party interest, as they believed, of the late Minister, who had been defeated alike in the Assembly and before the electors, they considered it to be their duty to persevere in their line of policy on the Border question. It did not appear to them, however, that the occasion called for advice to your Excellency either before or after the defeat of the Bill. They were aware of the views on the question of appointments to the Council maintained by Sir John Young at the time of its reconstruction in 1861, under the provision of the Constitution for life-membership, and of the understanding, concurred in by men of political prominence, that a maximum of 27 Members should be generally recognised—though it is right to observe that it is within their knowledge that Mr. Cowper (now Sir Charles Cowper), who was then at the head of the Administration, has denied that he was a party to any such understanding. (*Appendix C.*) They were also desirous of avoiding any course which might have the appearance of tampering with the Constitution to meet a sudden emergency; but they were not the less sensible of the abortive and incongruous state of things into which the Colony was brought in the conduct of this question. The late Legislative Assembly in February was dissolved, because it was in favour of the policy of the Border Duties Bill; and a direct appeal was made to the Constituencies on the question, as is proved by Sir James Martin's address, when seeking re-election (*Appendix D.*) The result of the dissolution proved that a majority of the electors were in accord with the Assembly; the new House affirmed the same views of policy by large majorities; and the measure which was produced by these causes, and received the constitutional sanction of these events, is defeated in the Legislative Council in July, by a majority of one, without calling forth any exercise of power to avert or moderate the consequences. This state of things, they felt assured, could not fail of giving rise to popular dissatisfaction and an angry feeling in the public mind: and, after mature consideration of the case before them, your Excellency's Advisers arrived at the opinion that the action of the Legislative Council on this occasion, viewed in connection with the unsatisfactory character of certain appointments in past years, and the facility with which, in their belief, outside and merely personal influences could be exercised upon the Council's deliberations, afforded signal evidence of the failure of the nominee principle. Nor could they conceal from their view that the working of the principle on which the Council is based,

based, had invoked the interference of Her Majesty's Secretary of State in a manner not expressly sanctioned by law, and which, with expressions of deep respect, your Excellency's Advisers cannot but consider incompatible with the rights of self-government secured to the Colony by the Constitution.

Your Excellency's Advisers have therefore decided to introduce, in the next Session of Parliament, a Bill to reconstruct the Legislative Council on an elective basis, which they feel assured will receive the support of a large majority in the Assembly and throughout the country. Although this part of their policy does not of itself require any explanation at the present time, still it cannot be contemplated without the prospect of a contingency in respect to which it appears to your Excellency's Advisers desirable that their views should be communicated to the Right Honourable the Secretary of State. They cannot entertain the hope that the measure which they contemplate will be carried without much difficulty in the Council, whose Members will have a life-interest in its resistance. In this event, which is regarded as most probable, the legislation of the Colony will still have to be carried on, possibly for several years, with the continued existence of the nominee principle in the Council; and your Excellency's Advisers are compelled to weigh beforehand the considerations which ought in their judgment to determine appointments to that body. Considered as a matter of argument, they could not recognize the wisdom and sound policy of a low maximum; but, if an arbitrary rule were to be kept in view, they are of opinion that a maximum equal at least to one-half of the Assembly would be safer for the public interest, and more likely to secure a true representation of those elements of political experience, mature judgment, and the distinction and authority arising from public service, which ought to prevail in the Legislative Council, and would afford better guarantees against small personal organisations and clique influences. But so long as the nominee principle exists in the Constitution, your Excellency's advisers must continue to recognise the full force of the principal argument employed by Mr. Wentworth in support of its introduction, which was its expansiveness; and they cannot admit that the letter of the Constitution should be refined away by any unwritten arbitrary rule whatever. They respectfully submit that all appointments to the Legislative Council should be determined by the circumstances of each case, the exigencies of the time, and by grave considerations which cannot be foreseen and estimated until they arise; and that it was intended that they should be so determined by the framers of the Constitution. While dutifully expressing their loyal attachment to the Throne and institutions of the Empire, your Excellency's advisers cannot, even by implication, consent to relinquish the smallest vestige of the liberties of this colony, or concur in any rule or instruction at variance with the absolute right of its people to govern themselves in all matters within their own shores, as secured to them by the Constitution.

They respectfully request that your Excellency will transmit this minute, by the outgoing mail, to the Right Honourable the Secretary of State for the Colonies.

The Attorney General was unavoidably absent from the meeting of Cabinet; but he concurs in the views herein expressed. I append copies of the Division Lists on the Border Duties Bill in the Assembly and Council (marked E. and F.)

(signed) *Henry Parkes.*

Colonial Secretary's Office, Sydney,
8 August 1872.

(A.)

EXTRACT from the "Sydney Morning Herald" of 27th July 1872.

The rejection of the Border Customs Convention Bill by a majority of one in the Legislative Council is a disastrous exercise of an undoubted right, besides being contrary to that policy which usually governs an Upper House. The measure is one purely of administration, the mode of collecting revenue. It has, moreover, the recommendation in principle of five years' practice. The policy of those five years the late Government professed to renew.

The Members of the Upper House who voted for the Bill are mostly persons of established political reputation. Mr. Deas Thompson, Mr. Hay, Mr. Samuel, Mr. Weekes, Mr. Alexander Campbell, Mr. Owen, and Mr. Holt, are all men of long standing, of great political experience, especially conversant with subjects of Customs and finance, and all having been Members of the Lower House. In the other list, not one man has held any office in connection with the administration of Customs and finance, and only one has shared in the Government, Mr. Docker, a gentleman who owed his elevation to the Upper House to the personal regard of the late Premier, and who never was elected by the people. An adverse vote, therefore, ought to have been given under very solemn convictions, after a close examination of the subject, and a conscientious discharge of all preparatory Sessional duties.

If the decision is to be taken as final, its wisdom will have to be proved by the event. It was a solemn thing to listen to the warnings of that distinguished public man, Mr. Deas Thomson, who has acquired by his intelligence and moderation the title to be called a statesman, when he told his hearers that the House should not look at the measure merely from a fiscal point of view; when he told them that, for the sake of a small pecuniary advantage, they were leading to the separation of the territory; and when he warned them that, if discontent were to arise, no effort on the part of the Legislature or people of this country could prevent an event which he should exceedingly deplore. He might have added that, in a conflict of this kind, where the passions were not unlikely to be awakened, consequences might result still more disastrous; and that, as in former disagreements, it might be requisite to send the Permanent Force to maintain a system declared to be odious and oppressive. We fear that there were few much impressed with any other consequence than the immediate result of rejecting the Bill. The motives, however, which influence men are often pure as well as mistaken, and there were, in the majority of one, persons incapable of giving a vote for the sake of serving a partisan or defeating a Ministry. Yet a celebrated writer, referring to the first American quarrel, traces the views of some who precipitated a separation. "He meant," speaking of the leader of the Opposition, "only to ruin a Minister, and he destroyed an empire."

Looking at the names and connections of those who voted for the rejection of the Bill, we do not see many persons whose lengthened experience of public affairs, and whose command of the confidence of their fellow-colonists, will explain their thwarting a measure approved by the great majority. Mr. Deas Thomson affirmed "that he could not doubt for a single moment that this measure had received as it were the assent of the whole colony."

What course the Government may choose to take should be marked by coolness and deliberation. They should not meet a vexatious exercise of power with threats, as if one error destroyed the utility of an institution. It is indeed possible, by adopting a wrong principle in the nomination of Members, to permanently impair its usefulness. If nominations are made of persons who have held no office as representatives of the people, but are chosen merely because the great man of the day thinks proper to distinguish them with his favour, we may lose that highly valuable constitutional principle which assigns a legislative power on the nomination of the Crown, but confines that nomination only to persons of an established reputation. These mistakes have in other countries led to changes which have made a Legislative Council an inferior duplicate of the Assembly in political authority, and therefore utility. Hitherto the Legislative Council has given effect to the views of the representatives in principle, and has therefore maintained the power of moderating their action. In this instance it has reversed the policy of the colony, long established and deliberately affirmed, by taking advantage of the lapse of regulations which it was the object of the Bill to restore and maintain. The Legislative Council has not therefore repelled a measure proposing a novelty, but upset a system which had till recently the force of law.

It may be proper for the Government to consider whether there is any remedy for the mischief. Nothing is more thoroughly established than the rules of Parliament which forbid the bringing in of a Bill of the same "argument" and "matter" in the same Session. We learn from "May's Parliamentary Practice" (third edition), 249th page, that so imperative is this regulation, that in 1807 Parliament was actually prorogued for a week in order to admit the revival of a Bill which had been rejected by the Lords. We infer from the proceedings in the Upper House that the wish of a majority of one was to precipitate an irrevocable decision; that the aim of Mr. Samuel was to postpone it, to give time to bring up Members to support the measure. If therefore it is known that their absence caused the Bill to be lost, the public may be saved great inconvenience, and perhaps worse, by a short prorogation. If the country had never been heard upon the subject, and if the party who had opposed the measure had done so upon a well-known and traditional policy, or if the Bill introduced any practice not already tested by years of experience, and to a late date never disputed in principle, the Legislative Council would have been justified in commending the question again to the deliberation of the country, and reserving for it the benefit of second thoughts. This, indeed, is the real business of the Upper House, and its power of maintaining an effective influence is in carefully respecting the conditions under which it is exercised. But in this instance it has attempted to arrest the discussion of an important fiscal measure, which would certainly have admitted a more careful consideration than could be given in a sitting of a few hours.

Mr. Parkes has, however, put upon the Motion Paper a series of resolutions intended to dispense with the law. The Attorney General (Mr. Butler) repeatedly told the Assembly, during the discussion on the Bill, that the collection of the customs on the border remained a legal obligation, and that it could only be abolished by the authority of Parliament. Have the Ministry abandoned this opinion, and have they consented to a policy which they declared to be unlawful? We hope not. Better lose the Bill and suffer the inconvenience of delay than set up the Assembly above the whole Legislature, and especially upon an assumption utterly unjustifiable, that the Council will approve hereafter of a policy which they have condemned, and cure its illegality by an *ex post facto* law.

(B.)

Tuesday, 30th July 1872.

Government Business—Notice of Motion:—

1. Mr. Parkes to move, That this House will, to-morrow, resolve itself into a Committee of the Whole, to consider the expediency of adopting the following Resolutions, namely:—

That an humble Address be presented to his Excellency the Governor, transmitting to his Excellency the following Resolutions:—

(1.) That Parliament was dissolved, and an appeal made to the people, in February last, on the question, Whether or not the Customs Duties should be actually collected on the Boundary between this Colony and the Colonies of Victoria and South Australia; and that the First Minister who advised the Dissolution put this issue, and this issue alone, to the electors.

(2.) That a large majority of Members were returned to this House in support of the policy of accepting a specific sum from the adjoining Colonies in lieu of the actual collection of the Duties.

(3.) That a Bill to give effect to this policy was read a second time in this House by a majority of 37 to 17, and a third time by a majority of 29 to 14, and was duly transmitted to the Legislative Council for its concurrence.

(4.) That the said Bill, embodying the policy approved by the late and the present Legislative Assembly, and confirmed by the collective vote of the constituencies, has been defeated in the Legislative Council, in disregard of the expressed will of the people and their representatives in Parliament, by a majority of nine to eight out of the 31 Members forming that House.

(5.) That this House is of opinion that the circumstances of this conjuncture justify the Government in proceeding without delay to make an agreement with the Governments of Victoria and South Australia, or with either of those Governments, for securing the payment of a specific sum, fairly ascertained as the approximate amount of revenue to which this Colony is entitled, in lieu of the actual collection of the Border Duties, such agreement to be subject to ratification by Parliament in this or the next following Session.

(C.)

Copy of Telegram to the Honourable Charles Cowper, Esq., Dubbo, from the Honourable John Robertson, Esq., holding the position of Colonial Secretary and Premier, dated 29th June 1869.

Did you ever consent, by Minute or otherwise, to limit the number of appointments to the Legislative Council?

Reply of the Honourable Charles Cowper, Esq., dated Dubbo, 30th June 1869, to the Honourable John Robertson, Esq., Colonial Secretary, Sydney.

I do not remember ever to have pledged myself, either verbally or in writing, to such an agreement, and, unless a document can be produced to the contrary, I do not believe that I ever did so.

(D.)

EXTRACT from the "Sydney Morning Herald" of 8th February 1872.

To the Electors of East Sydney.

Gentlemen,—

FROM 1855 to September 1864 no duties were received by this colony on goods imported across the Murray. The loss to our Treasury during that period by reason of such non-collection must have been at least 400,000*l.*, every penny of which went into the Treasury of Victoria. In April 1863 Mr. Cowper proposed to Mr. O'Shanassy to enter into some arrangement by which this colony might be enabled to receive the duties in question. In May 1863 the Under Secretary of Victoria wrote to Mr. Cowper in answer to his proposal, and distinctly declined to accept it. A week afterwards Mr. Cowper submitted three proposals in reference to the Border Duties. After the lapse of nearly three months, on the 30th May 1863, Mr. O'Shanassy replied, refusing to enter into any arrangement whatever, on the ground that the advantage derived by this colony from access to the Victorian market was a sufficient compensation for the loss of the Border Duties. In February 1864 Mr. Hart, the Treasurer of South Australia, undertook to re-open the question with the Government of Victoria, on behalf of this colony, and on the 19th March he sent a telegram to the Government in Sydney, stating that Victoria would agree to no terms. In June 1864, three months after this telegram, Mr.

Forster wrote to the Chief Secretary of Victoria again, urging the propriety of making an arrangement to avoid, if possible, the actual collection of duties on the Murray. Mr. M'Culloch evaded the question by raising another issue. All efforts for accommodation having thus failed, and this colony having suffered for nearly 10 years a loss of revenue not less than 40,000 *l.* a year, on the 18th August 1864, public notice was given that the Border Duties would be collected on the 19th September following, and on that day (19th September 1864), the Custom House officers began to collect. Between that date and the end of the year 1864, three months and 11 days, the actual collections amounted to 3,600 *l.* 15 *s.* 7 *d.*, this sum being so small in consequence of the very large quantity of goods sent over from Victoria during the month which the liberality of this Government allowed to merchants and others for the purpose of making their arrangements. In the year 1865 the Border Duties ceased to be collected from 1st May to the 27th June, in consequence of an arrangement which afterwards fell through. The amount actually collected for the year, less the 1 month and 27 days during which there was no collection, was 32,765 *l.* 4 *s.* 3 *d.* For this 1 month and 27 days Victoria afterwards paid 6,800 *l.*, thus making the whole payment for the year 1865 39,565 *l.* 4 *s.* 3 *d.* In the year 1866 the Border Duties realised 61,760 *l.* 14 *s.* 9 *d.*, and in January 1867 they amounted to 4,976 *l.* 4 *s.* 11 *d.* The sum therefore realised by this colony for those duties, from the 19th September 1864 to the 1st February 1867, being 2 years 4 months and 11 days, was 109,902 *l.* 19 *s.* 6 *d.*; the income of the last year (1866) being nearly 62,000 *l.*

On the 1st February 1867 the arrangement came into operation by which, for five years, Victoria paid to New South Wales 60,000 *l.* a year, being nearly 2,000 *l.* a year less than the actual collections in 1866. Mr. Samuel opposed this arrangement, on the ground of the inadequacy of the sum of 60,000 *l.*, which he said would, during the next five years, be "more than quadrupled." Mr. Macleay, in the same debate, while eulogising the Government for making the best arrangement that could be made under the circumstances, hoped that we should be in a position "to make a better arrangement with Victoria when the agreement then in existence should expire."

Towards the close of last year no one doubted that a much larger sum than 60,000 *l.* a year ought to be paid by Victoria if the Border Duty arrangement were to be continued. In order to effect such an arrangement, two of my colleagues and myself went to Melbourne, and were at once met with the distinct assurance by Mr. Duffy and Mr. Berry that under no circumstances would Victoria pay more than 60,000 *l.* My colleague and I therefore saw that there was no prospect of an agreement, and we submitted to Mr. Duffy and Mr. Berry a memorandum in which this distinct refusal of theirs to pay more than 60,000 *l.* was set forth. To that statement they took no exception, but they afterwards proposed that the Border Duty arrangement should be extended for another year, and that during that year an account should be taken, which might serve as the basis of a new arrangement. This we declined to accede to, considering that we should have grossly betrayed the interests of this colony if we had consented to receive for the year 1872 a sum less by 2,000 *l.* than the actual collection for the year 1866.

Immediately after the conference was closed, and since Mr. Duffy has expressed a willingness to have accounts taken, and to pay what these accounts shall show this colony to be entitled to. We have declined to accept any sum less than 60,000 *l.*, having no doubt whatever, and believing that no one else has any doubt whatever, that the amount of the duties payable to this colony, after deducting the duties payable to Victoria, will be much more than that sum. We have insisted on the payment of that sum at least, and as much more as the accounts will show to be our due, as we know that the amount cannot possibly be less. In this view the Assembly agreed with us, but the same Assembly afterwards, without rescinding its former vote, came to a different conclusion, and adopted the view of Mr. Duffy, that no sum should be fixed as a minimum, but that the amount to be paid to New South Wales should altogether depend upon the account.

From the decision of this Assembly, which thus within six weeks adopted two opposite and contradictory resolutions, and by the last of them played most unpatriotically into the hands of Victoria, we deemed it our duty to appeal to the Constituencies. I am therefore now before you a candidate for re-election. By the imposition of the Border Duties, at my instance, on the 19th September 1864, this Colony, in 2 years 4 months and 11 days received 109,902 *l.* 19*s.* 6*d.*, and in the subsequent five years 300,000 *l.*—in all, 409,902 *l.* 19*s.* 6*d.*, not one penny of which would have been paid if the Victorian Government could have prevented it. It is my desire that our Treasury should receive the duties to which it is fairly entitled, and no energy has been—no energy shall be spared, on my part to secure to this heavily taxed community the entire sum that those duties amount to. It would have been easy for the Government to have accepted the resolution moved by Mr. Jennings, and so have avoided the possibility of a crisis on this Border question. But we thought it was our duty rather to stand by what we considered to be the public interest, and refuse, under any circumstances, to leave open to the hazard of dispute and disagreement a portion of the public income, about our right to which there could have existed no possibility of doubt. This Government has throughout acted liberally and in good faith with Victoria. My colleagues and I have acted with firmness also, and we feel assured that, in taking the stand we have done, we shall be supported by the country.

I am, &c.

7th February 1872. *James Martin.*

(E.)

Wednesday, 26 June 1872.

12. *Border Duties Convention Bill.*—The adjourned Debate on the motion of Mr. Parkes, "That this Bill be now read a second time," —resumed.

Question put.

The House divided.

Ayes, 37.		Noes, 17.
Mr. Parkes,	Mr. Jacob,	Sir James Martin,
Mr. Butler,	Mr. Neale,	Mr. Robertson,
Mr. Farnell,	Mr. Forster,	Mr. Lord,
Mr. Piddington,	Mr. Moses,	Mr. J. S. Smith,
Mr. Innes,	Mr. Macleay,	Mr. West,
Mr. Sutherland,	Mr. Greville,	Mr. Booth,
Mr. Nelson,	Mr. Lee,	Mr. Macintosh,
Mr. G. A. Lloyd,	Mr. Hurley (*Narellan*),	Mr. Campbell,
Mr. Bawden,	Mr. Oakes,	Mr. Hill,
Mr. Tunks,	Mr. Grahame,	Mr. Warden,
Mr. Bennett,	Mr. Rodd,	Mr. Clarke,
Mr. Driver,	Mr. Taylor,	Mr. Hannell,
Mr. M'Laurin,	Mr. De Salis,	Mr. R. B. Smith,
Mr. Scholey,	Mr. Teece,	Mr. Combes.
Mr. Hoskins,	Mr. W. C. Browne.	Mr. Lackey.
Mr. Single,	*Tellers.*	*Tellers.*
Mr. Nowlan,		
Mr. Abbott,	Mr. Creed,	Mr. Garrett,
Mr. Thomas Brown,	Mr. Burns.	Mr. Stewart.
Mr. Fitzpatrick,		

And so it was resolved in the affirmative.

Bill read a second time.

(F.)

Wednesday, 24 July 1872.

9. *Border Duties Convention Bill.*—The Adjourned Debate, on motion of Mr. Samuel, That this Bill be "now" read a second time, upon which Mr. Docker had moved by way of Amendment, That the Question be amended by the omission of the word "now," with a view to add at the end the words "this day six months,"—resumed.

Question put,—That the words proposed to be omitted stand part of the Question.

The House divided.

Ayes, 8.	Noes, 9.
Mr. Samuel,	Mr. Docker,
Mr. Allen,	Sir William Macarthur,
Mr. Hay,	Mr. Moore,
Mr. Owen,	Mr. Gordon,
Mr. Alexander Campbell.	Mr. Park,
Mr. Weekes.	Mr. John Campbell,
Tellers.	Mr. Byrnes.
Mr. Blaxland.	*Tellers.*
Mr. Holt.	Mr. Lord,
	Mr. Darley.

Point of Order.—Upon the Question being proposed,—That the words "this day six months" proposed to be added at the end of the Question be there added,—an Honourable Member offered to amend the proposed Amendment by omitting the words "six months," and adding the word "week" in lieu thereof.

The President stated, That in his opinion the Amendment thus proposed was irregular, but that if the House negatived the addition to the Question of the words "this day six months," any Honourable Member might then propose to fill the blank with such other time as he may think fit.

Question then put,—That the words proposed to be added at the end of the Question be then added.

The House divided.

Ayes, 9.	Noes, 8.
Mr. Lord,	Mr. Samuel,
Mr. Gordon,	Mr. Allen,
Mr. John Campbell,	Mr. Holt,
Sir William Macarthur,	Mr. Hay,
Mr. Docker,	Mr. Owen,
Mr. Darley,	Mr. Blaxland.
Mr. Byrnes.	*Tellers.*
Tellers.	Mr. Alexander Campbell,
Mr. Park,	Mr. Weekes.
Mr. Moore.	

Whereupon Question,—That this Bill be read a second time this day six months,—put and passed.

No. 2.

Governor Sir *Hercules Robinson* to the Secretary of State for the Colonies.

(No. 41.)

My Lord, Government House, Sydney, 27 August 1872.

In my despatch, No. 34, of the 10th instant, I transmitted a minute of the Cabinet on the constitution of the Legislative Council, and promised to communicate in a subsequent despatch my own views on the question which was thus submitted for your Lordship's consideration.

2. I have since perused the correspondence which has passed on this subject, from the date of the establishment of the existing Constitution to the present time; and it will perhaps be convenient that I should give here a brief narrative of the facts which are presented by the papers to which I have been enabled to refer.

3. When the Constitution Act (No. 41 of 1853) was under discussion, it was decided, after lengthened deliberation, that the Legislative Council should be a nominated and not an elected Chamber. The Act prescribed also, amongst other provisions, that the minimum number of the Upper House should be 21; that the quorum should be one-third of the whole number; and that the Members first appointed should retain their seats for five years from the date of the first summonses, but that all future Members, after the expiration of that term, should be appointed for life.

4. In May 1856 the first Legislative Council was established under this Act. The number of Members then appointed was 32, but before the close of that year (three changes of Ministry having taken place in the interval) the number had been increased to 45. The maximum number of Members at any one time, during the first five years, appears to have been 48. This was exclusive of the exceptional appointments made within the last few days of the five years, when the Council was, to use a familiar term, "swamped" by the nomination of 21 new Members, to carry the Land Bills. These Members, however, never took their seats, for, on presenting themselves to be sworn in, the President, with the majority of the old Members, retired, and the House ceased to exist, by the expiration of the period specified for its duration before the next regular day of meeting.

5. Shortly afterwards—that is, in July, 1861—The Legislative Council was reconstructed by the appointment of Members for life, as prescribed by the Constitution Act. The necessity for recognising some usual limit in the number of Members—to be observed except under very special and exceptional circumstances — was then very generally admitted, as it had become apparent, from the experience of the previous five years, that unless some such limitation were adopted and adhered to, it would be impossible to maintain the character and efficiency of the Council as an independent branch of the Legislature. The consultations which took place at the time, and the understanding which was eventually arrived at on this subject, were some years later thus described by Sir John Young, in his despatch, No. 14, of the 16th February, 1865:—

> "At the time of the reconstruction of the Legislative Council in 1861 these difficulties were much and anxiously considered, and an effort was made to suggest what might be, subject to exceptional cases, a convenient limitation to the number of the Upper House * * * I consulted the leaders of the Liberal party on the one hand, that is, the Ministers then in office; and also, with their cognisance, I availed myself of the advice of gentlemen of social standing and of leading political position in other sections. In fact, I called into counsel, under the auspices of Mr. Wentworth, the framer of the Constitution Act, several gentlemen of various political opinions

opinions who were at the time prominent in Parliament or in possession of much general influence. It was understood that Mr. Wentworth was to be the President of the new Legislative Council, and I appointed him to the office as soon as it was formed. After many interviews and much deliberation, it was the general opinion of those gentlemen that 27 Members might with advantage be considered a convenient usual limit of the Council, and with this view I concurred. Mr. Cooper and his colleagues recommended that seats should in the first instance be offered to 27 gentlemen accordingly. Several declined on various grounds, and eventually 23 only were gazetted. That number was not subsequently augmented beyond 26 during that administration, which lasted nearly two and a-half years afterwards. Of course it was never contemplated that the Constitution Act could be set aside, or that any succeeding Ministry could be bound by the opinion of their predecessors, although by common consent the convenience of some usual limit might be recognised; neither was it ever contemplated that the Governor could relieve himself of responsibility, by giving beforehand his assent to any unvarying course of action; but I thought that what was then done might with advantage be referred to thereafter by myself and others, not as an absolute guide, but as giving the assistance of the opinion of able and impartial men, who were all equally anxious for the permanent stability of the Constitution."

6. Mr. Cowper's Ministry was succeeded in office by that of Mr. Martin, which lasted from October, 1863, to February, 1865, and during that period Sir John Young yielded so far to the wishes of the Ministry as to increase the Council to 32, so as to give 27 Members present in the Colony and "available for service,"—four Members being at that time absent from the Colony, and one about to leave for England. But when Mr. Martin, in January, 1865, shortly before the break-up of his Administration, urged a further increase of the effective Members from 27 to 29, Sir John Young refused, and the refusal led to the resignation of Mr. Forster, the Colonial Secretary, as explained in the despatch from which I have already quoted. Mr. Cardwell, in his despatch, No. 37, of the 26th May, 1865, considered the reasons given by Sir John Young for refusing to appoint two additional Members to the Legislative Council, on the recommendation of his responsible advisers, sound and convincing.

7. In September, 1868, Mr. Martin, being again in office, prevailed on Lord Belmore to increase the Legislative Council from 27 to 30 Members on the ground of the difficulty experienced in securing a quorum for the transaction of business; and on this increase being reported home, Lord Granville expressed his regret at the step, as he feared it would be used as a precedent for further additions.

Lord Belmore—No. 109, 29 Sept. '68.
Lord Granville—No. 2, 18 Dec. 1868.

8. In October, 1868, Mr. Martin went out of office, and was succeeded by Mr. Robertson, who in the following July submitted a memorandum in reference to Lord Granville's despatch of the 18th December, 1868, in which he deprecated as unconstitutional the imposition of any limitation in the number of the Legislative Council, and declined, on behalf of his Cabinet, to recognise any such understanding. In acknowledging this memorandum, Lord Granville observed:

Lord Belmore—No. 109, 14 July, 1869.
Lord Granville—No. 77, 2 Oct. 1869.

"When writing that despatch, I was fully aware that the number of the Upper House in New South Wales was unlimited. I am also fully aware that on certain critical occasions it may become not only expedient, but indispensable, to bring the two Houses into harmony by creating or threatening to create a number of Legislative Councillors sufficient for that purpose. But it is not the less clear that the whole value and character of the Upper Chamber will be destroyed if every successive Ministry is at liberty, without any sufficient occasion, to obtain a majority in the Council by the creation of Councillors. To prevent this, some constitutional understanding, having in the public eye the form of a valuable though not absolutely inflexible precedent, and limiting the circumstances under which such creations can properly take place, is desirable. Such an understanding did, in fact, exist between Sir John Young and his successive Ministers; and the object of my despatch of the 18th of December was to enforce on you the inconvenience of any course which was calculated, without necessity, to impair the authority of that understanding, and to the expediency of making it clear, in the interest of the Colonial Constitution, that any necessary violation of its letter was not really a violation of its spirit; that is to say, that it was resorted to not to strengthen a party, but in reality for the convenience of legislation."

9. In December, 1869, Mr. Robertson recommended to Lord Belmore appointments to the Legislative Council which would have involved a further increase in the number of that Chamber from 30 to 33 Members. He urged in support of his proposal, that he still declined to recognise the validity of any such understanding as that agreed to between Sir John Young and former ministries, and that so small a number of the Council had been appointed by Governments of which he had been a Member that additional appointments were then necessary to enable him to carry on the Government. Lord Belmore declined to act on the advice tendered, and the appointments were not made. Mr. Robertson soon after resigned office, on grounds unconnected with this refusal, and the course adopted by Lord Belmore in this matter was approved by the Secretary of State.

10. Since then the number of the Legislative Council has not been allowed to exceed thirty, except occasionally when, as at present, an extra Member has been appointed to give the Minister of the day a Representative of his own selection in the Upper House.

11. Thus it will be seen that, although several attempts have been made to break through the understanding come to in 1861, such attempts have always been successfully resisted, except in the one instance, which I have detailed, in the year 1868, when the maximum was increased from 27 to 30. And, indeed, notwithstanding this increase, I think it may be fairly contended that the spirit of the understanding of 1861 has been adhered to up to the present time; for, as I have shown, Sir John Young himself interpreted that understanding as meaning 27 members "present in the Colony, and available for service"; and if from the number of 31, now on the roll, there be deducted one Member absent in England, two Members who are by age and infirmity rendered incapable of attending to their duties, and one who has been obliged, in consequence of altered circumstances, to remove to a great distance (350 miles) from Sydney, there will remain only 27 members available for service, many of whom even are prevented from attending regularly by a variety of causes.

12. I now come to the Minute of the Cabinet upon the present composition of the Legislative Council, which has been submitted for your Lordship's consideration. In that paper Mr. Parkes alludes, in the first place, to the large number of appointments to the Council which have been made by Sir James Martin, several of the gentlemen so selected being, he considers, unknown to public life, and without ascertainable political opinions. He calls attention next to the irregular attendance of a considerable portion of the Council, from a variety of causes, and he proceeds to animadvert upon the course adopted by the Council on the Border Customs Bill, which was defeated by what he characterises as a party vote. He adds that he and his colleagues are of opinion that "the action of the Legislative Council on this occasion, viewed in connection with the unsatisfactory character of certain appointments in past years, and the facility with which, in their belief, outside and mere personal influences could be exercised upon the Council's deliberations, afforded signal evidence of the failure of the nominee principle." And he intimates that the Cabinet had, in consequence, decided to introduce, in the next Session of Parliament, a Bill to reconstruct the Council on an elective basis. This, of course, is a perfectly legitimate issue to be laid before the country. It is obvious that so long as the appointments to life seats in the Upper Chamber are made by the minister of the day, no guarantee can be afforded that the selections will always be made with regard solely to the fitness of the person chosen, and his ability and willingness to devote himself with assiduity to the business of legislation. Other considerations of a personal or party character will often present themselves which, practically, it will be very difficult to resist; and it remains, therefore, for the Legislature and the public to weigh carefully the evils which are inseparable from the nominee system, in comparison with those which attach to a Chamber constructed on an elective basis, and to adopt the form which may, on the whole, be held to present the fewest disadvantages.

13. The object of Mr. Parkes's minute, however, as he explains, is not to discuss the merits of the policy which he is prepared to pursue, but to bring under your Lordship's notice the considerations which, in his opinion, ought to determine appointments to the Legislative Council as at present constituted; for he thinks it most probable that the legislation of the colony will still have to be carried on for several years with the continued existence of the nominee principle in the Council. He is of opinion that if any limit in the number is to be observed, 36 would be a better maximum than 30, but he objects strongly to the recognition of any understanding on such a subject, as he considers that all appointments should be determined by the merits of each case.

14. The grounds urged for a maximum of 36 are that such a number "would be safer for the public interest, and more likely to secure a true representation of those elements of political experience, mature judgment, and the distinction and authority arising from public service, which ought to prevail in the Legislative Council, and would afford better guarantees against small personal organisations and clique influences." But I must confess I am unable to see why these results should follow a mere increase in the numerical strength of the Council from 30 or 31 to 36. The evils complained of by Mr. Parkes in the present composition of the Legislative Council are not traceable, as far as I can see, to any limitation in the number. If Members were selected solely with regard to fitness and to their ability and disposition to attend regularly, 27 or 30 would be found amply sufficient to meet all the requirements of an Upper Chamber, whilst if their selection be influenced by other considerations, a mere increase in the number will not affect any permanent improvement. This view is, I think, supported by the experience of the past. For the first five years after the establishment of the Council the average number of Members was 44, and the quorum for this number would be 15. I find that the largest division during each of the seven Sessions which were held in those five years was as follows:—26, 29, 37, 26, 31, 27, and 29. The smallest division in each Session was—14, 11, 13, 14, 9, 11, and 11—nearly all below a quorum, and therefore inoperative. During the same period the House was unable to proceed to business from the absence of

a quorum

a quorum on 14 occasions, and was counted out 15 times during the progress of business. These facts would seem to indicate that the attendance was relatively not much better then than it has been of late with a smaller number; and it must be remembered that after five years' experience of a House which, as I have stated, averaged 44 Members, the leading men of all political parties were agreed that the Council was too large, and ought to be reduced.

15. At the same time, I do not pretend to say that the present number is precisely the best that can be fixed, and I am not aware of any special reason why the limit should be 30 instead of 36. I believe that Mr. Parkes is so impressed with the necessity of exercising great care in making appointments for life to the Upper House, that if he had to nominate five or six new Members, he would, I feel assured, make selections which would prove an acquisition to the Chamber; but the difficulty I see is that if any addition were now made without special cause, it would furnish a second precedent for further additions, which it would then be extremely difficult to resist.

16. As regards the constitutional objections urged by Mr. Parkes to the recognition of any understanding as to a limit in the ordinary number of the Council, I need only point out that similar objections were advanced by Mr. Forster and Mr. Robertson; and as their representations have already been, in my opinion, conclusively answered in Sir J. Young's and Lord Granville's Despatches, to which I have referred, I need not go over the same ground again. I will merely observe in reference to Mr. Parkes's allusion to Mr. Wentworth's opinion as to the advantage of expansiveness in a nominated Council, that a perusal of the debates on the Constitution Bill will show that when advocating the superiority of the nominee principle (as compared with an elective Upper House) on the ground of its greater flexibility and expansiveness, Mr. Wentworth had in view not the constant exercise of an unlimited power of making appointments to meet the ordinary exigencies of party Government, but the power which the nominee system would, as a last resort, place in the hands of the responsible Minister of the day to bring the two Houses of the Legislature into harmony with each other, by the creation of new Members, if it should ever be found indispensable to the public safety to adopt such an extreme measure, after every other means of reconciling conflicting opinions had failed. And Mr. Wentworth, after five years' experience of the Council without any recognised limit, concurred, on the reconstruction of that body in 1861, in the advisability of fixing an ordinary maximum, which should not be exceeded except under very special and exceptional circumstances.

17. There is only one other point in the Minute upon which I feel it necessary to offer any further remark. I refer to the passage which alleges "that the working of the principle upon which the Council is based has invoked the interference of Her Majesty's Secretary of State in a manner not expressly sanctioned by law, and which, with expressions of deep respect, your Excellency's advisers cannot but consider incompatible with the rights of self-government secured to the Colony by the Constitution." I can find nothing in the past correspondence to support such a charge. When Sir John Young "swamped" the Legislative Council in 1861 and reported the circumstance home, the Secretary of State merely expressed his regret at the course adopted by the Governor, which did not appear to him to be justified by the urgency of the occasion. When Sir John Young refused to enlarge the Council, in 1865, and Mr. Forster in consequence resigned, and appealed to the Secretary of State, Mr. Cardwell simply replied that he thought the reasons given for the refusal were sound and convincing. When Lord Belmore enlarged the Council, in 1868, from 27 to 30, and reported the appointments home, the Secretary of State only remarked that any increase was likely to be used as a precedent for further additions, and was therefore to be regretted. And when Lord Belmore declined, in 1869, to increase the Council from 30 to 33, and reported to the Secretary of State the grounds for his refusal, Lord Granville merely approved of the language which Lord Belmore had held to Mr. Robertson on the occasion. Thus it will be seen that in every instance when questions have arisen as to the appointment of additional members of Council, the Governor has acted on his own responsibility without previous reference to the Secretary of State, and that when the course adopted has been reported home, the Secretary of State has simply expressed his opinion as to the propriety or otherwise of the Governor's proceedings,—an opinion which on one of the occasions referred to was specially invited by the Minister who conceived himself aggrieved by the Governor's decision. The understanding between the leading politicians in 1861, as to a limitation in the ordinary number of the Council, was not come to in consequence of any suggestion from home, nor was it even reported to the Secretary of State for several years. I can only imagine, therefore, that the passage in the Minute to which I have called attention has been written under some misapprehension as to the facts of the case.

I have, &c.
(signed) *Hercules Robinson.*

The Right Hon. the Earl of Kimberley,
&c. &c. &c.

No. 3.

The Secretary of State for the Colonies to Governor Sir *Hercules Robinson.*

(No. 89.)

Sir, Downing-street, 29 November 1872.

I HAVE received your Despatch No. 34, of the 10th August, transmitting a Minute by your Ministers on the constitution of the Legislative Council, and also your Despatch, No. 41, of the 27th August, containing your remarks upon that Minute.

2. Mr. Parkes, in the Minute signed by him on behalf of your advisers, after examining the composition of the Legislative Council at the time when the "Border Duties Bill" was brought before it, and the circumstances connected with the defeat of the Bill, after it had been passed by an Assembly elected with special reference to the policy to which it gave expression, stated that he and his colleagues could, after this transaction, look forward with little confidence to the action by the Council with regard to measures passed by the Assembly. He further observed that the Ministers were desirous to avoid any course which might have the appearance of tampering with the Constitution, and after mature consideration had arrived at the opinion that signal evidence had been afforded of the failure of the nominee principle, the working of which they held to have invoked the interference of the Secretary of State in a manner not expressly sanctioned by law, and incompatible with the rights of self-government secured to the Colony by the Constitution. They therefore had decided to introduce in the next Session a Bill to reconstruct the Legislative Council on an elective basis; and, with reference to probable reception of such a measure by the Council, they felt compelled to weigh beforehand the considerations which should determine appointments to that body. As a matter of argument they could not recognise the wisdom and sound policy of a low maximum, but if an arbitrary rule were to be kept in view, they were in favour of a maximum equal at least to one-half of the Assembly. But they held that no such arbitrary rule should be maintained, and that all appointments should be determined by the circumstances of each case and the exigencies of the time, which could not be foreseen; and they could not relinquish any part of the liberties of the Colony, nor concur in any rule at variance with the absolute right of the people to govern themselves in all matters within their Colony, as secured to them by the Constitution.

3. In your Despatch, No. 41, you give a clear and concise narrative of the several occasions on which the understanding arrived at in 1861, as to the number within which, for general convenience, it was expedient to limit nominations to the Council, has been questioned and proposed to be set aside, showing that it has nevertheless been maintained, with the consent of successive Ministers of differing opinions, and with only a slight modification, up to the present time, and you point out that this limitation was not suggested by Her Majesty's Goverment, and that its maintenance cannot justly be said to have been the result of any direct interference on the part of my predecessors.

4. Without entering into any lengthened examination of the present constitution of the Legislative Council, I would state that it does not appear to me to have been established that the appointment of its Members by nomination has been the cause of the difficulties which have from time to time induced Ministers to recommend the addition to it at once, for a particular object, of an unusual number of Members. If the tenure of his seat by a Legislative Councillor had been limited in the Constitution Act to a term of years, and it had been arranged that a fixed number of seats should become vacant, either annually or at frequently recurring periods, there would have been little danger of the Legislative Council being, or continuing for any long time to be, in opposition to the policy supported by the Elective House. And it does not seem out of place to inquire whether, if any reform of the constitution of the Council should be held to be requisite, it is necessary to abandon the system of nomination. I do not wish to express a decided preference for either form of constitution, but I may observe that a Legislative Council constituted on an elective basis has proved itself, as your Ministers are aware, not less liable than a nomination House to come into collision with the representatives returned to the Assembly.

5. With reference to the opinion expressed by your Ministers, that the right of self-government and the liberties of the Colony have been infringed by the rule acquiesced in by preceding administrations, I think it can hardly be maintained that it is beyond the proper province of Ministers, who, from time to time, hold power as possessing the confidence of an Assembly freely elected by the people, to govern their action by such an understanding.

6. It appears to me that the arrangement by which any amendment of the Constitution Act, always a matter of serious difficulty and responsibility, has hitherto been avoided, must be held to have acquired a certain force and value, and that in default of any fresh enactment, there is nothing inconsistent with the proper working of the Constitution in maintaining it.

7. The facts detailed in the first paragraph of Mr. Parkes's Minute show clearly the practical inconveniences, not to use a stronger term, that would result from commencing the

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on 31 October, 2019

the practice of making unlimited additions to the Council whenever the exigencies of the moment may lead Ministers to recommend them; and I am glad to be assured of your belief that he is impressed with the necessity of exercising great care in making appointments for life to that House. But even if the number of gentlemen having the requisite qualifications were larger than I understand it to be, and it were possible by the exercise of care to select at the present time a number of persons suitable to be appointed to the Council, that could not always be the case. When one Minister has succeeded in procuring the creation of a number of Members sufficient, in his opinion, either to redress the political balance which he alleges to be adverse to him in consequence of appointments made on the recommendation of predecessors from whose policy he differs, or to enable a measure of present importance to be passed in opposition to the views of the Council, a similar concession could not fairly be refused to his successor; and it is far from being impossible that in a few years the Members of the Legislative Council might thus be extravagantly increased, and its quality seriously deteriorated.

8. For the sake, therefore, of the permanent interests of Constitutional Government in the Colony, in the working of which Her Majesty's Government cannot but take a deep interest, although they seek in no way to interfere with its internal administration, I shall be glad to learn that your Ministers have thought it better to abstain from inviting you to depart from the understanding which has hitherto prevailed.

I have, &c.

Governor Sir Hercules Robinson, K.C.M.G., &c. &c. &c.

(signed) *Kimberley.*